PROBLEMS

of

CONTEMPT OF COURT

THOMAS

Digitized by the Internet Archive
in 2026

https://archive.org/details/IA41547018_0026

PROBLEMS *of* CONTEMPT OF COURT

A Study in Law and Public Policy

By

CROMWELL HOLMES THOMAS
LL.B., M.A., PH.D.

A DISSERTATION

Submitted to the Board of University Studies of the Johns Hopkins University in conformity with the requirements for the Degree of Doctor of Philosophy.

BALTIMORE, MARYLAND
1934

Copyright 1934
BY
C. H. THOMAS

TYPESETTING BY
MILLS-FRIZELL-EVANS CO.
BALTIMORE

PRINTING BY
HORN-SHAFER COMPANY
BALTIMORE

PREFACE

This volume is an elaboration of a dissertation prepared under the direction of the Department of Political Science of Johns Hopkins University in partial fulfillment of the qualifications for the degree of Doctor of Philosophy, and was the outgrowth of investigation, in the field of constitutional law, into the doctrine of the separation of powers and the relations between the various branches of government, both state and federal. This investigation dealt in part with the authority of the legislative branch to pass legislation limiting the contempt powers of the courts.

The author was encouraged to undertake research in the contempt field because of the fact that the only American volume upon the subject (Rapalje on Contempt, published in 1884) was so hopelessly inadequate, because of its age, its omissions, and the approach of its author, as to be of hardly any assistance to one interested either in the scope of the contempt power or of the problems created by its use. In these pages the writer has not attempted to write another text book upon contempts, but to present the more contentious portions of the contempt jurisdiction from the standpoint of both theory and practice, and combining the methods of Blackstone and Bentham so as to approach the subject with a view to both the law as it is and as it ought to be.

The purpose of this volume has been threefold: (1) To bring home to the jurist, the attorney, and the layman the summary character of the contempt power, the abuses possible thereunder, and the need for reform; (2) to set forth the struggle for trial by jury with respect to contemptuous publications, injunction violations, and obstructions of justice which also constitute grave criminal offenses; and (3) to discuss the question of the constitutionality of reform by statute and of the issuance of pardons in contempt cases and to point out the extreme jealousy with which the courts have defended their summary power.

The writer wishes to express indebtedness to Professor James H. Hart and Professor Frederick S. Dunn of the Political Science Department of Johns Hopkins University, and William Milnes Maloy, of the Baltimore Bar, for their suggestions and corrections; to the staff of the legal division of the Library of Congress; to the Library Company of the Baltimore Bar for the use of their splendid legal collections; and to my parents for their aid in the publication of this volume.

C. H. T.

Baltimore, Maryland, August 22, 1934.

TABLE OF CONTENTS

	PAGE
Preface	iii
Table of Contents	iv
List of Cases Cited	v
Chapter I—The Summary Contempt Jurisdiction	1
Chapter II—Objection to Summary Procedure in Indirect Contempts	7
Chapter III—Serious Crimes Punishable as Contempt of Court	13
Chapter IV—Contempt by Publication	19
Chapter V—Injunctions and Contempts	37
Chapter VI—Constitutionality of Statutory Reform	47
Chapter VII—Invalidation of Legislation by Judicial Construction of the Act of Congress of March 2, 1831	53
Chapter VIII—Contempt of Court and Executive Clemency	75
Appendix A—List of Pardons Granted by Presidents in Contempt Cases	97
Appendix B—Digest of State Laws on Contempt	99
Index	119

LIST OF CASES CITED

PAGE

Anderson v. Dunn, 6 Wheaton (U.S.) 204 56

Bakelite Corporation, Ex parte, 279 U.S. 438 48
Baker v. State, 9 S.E. 743 (Ga.) 16
Baumgartner v. Joughin, 141 S. 185 (Fla.) 16
Beattie v. People, 33 Ill.A. 651 15
Becker v. A., B. & B. Realty Co., 152 A. 241 (N.J.Eq.) 14, 15
Bee Publishing Company v. State, 195 N.W. 339 (Neb.) 108
Bessette v. Conkey Co., 194 U.S. 324 ..... 76, 93
Blankenburg v. Commonwealth, 172 N.E. 209 (Mass.) 14
Blim v. United States, 68 F. (2d) 484 14
Bowers, In re, 104 A. 196 (N.J.) 17, 51, 109
Bradley v. State, 36 S.E. 630 (Ga.) 48, 51, 101
Brown, In the matter of, 2 Col. 553 ..... 77, 80
Brule, In re, 71 F. 943 ..... 16, 17, 65, 66
Bucks Stove and Range Company v. Gompers, 33 D.C. App. 516 3
Burdett v. Commonwealth, 48 S.E. 878 (Va.) 48
Burge v. State, 145 S.E. 463 (Ga.A.) 16, 17

CarlLee, 143 S.W. 909 (Ark.) 48
Carter v. Commonwealth, 32 S.E. 780 (Va.) 14, 17, 51
C., B. & Q. Rwy. Co. v. Gildersleeve, 118 S.W. 86 (Mo.) 50, 51
Chicago Directory Co. v. United States Directory Co., 123 F. 194 ..... 14, 15
Clark v. United States, 61 F. (2d) 695 14
Cohen v. United States, 295 F. 633 32
Coleman v. State, 113 S.W. 1045 (Tenn.) 16
Coll v. United States, 8 F. (2d) 20 ..... 61, 74
Commonwealth v. Deakins, 4 Leigh 685 (Va.) 49
Commonwealth v. Feeley, 2 Va.Cas. 1 16
Conger's Case, 4 Op. Atty. Gen. 317 77
Conley et al. v. United States, 59 F. (2d) 929 17
Cooke v. United States, 267 U.S. 517 4
Cooper v. People, 22 P. 790 (Colo.) 51
Craig v. Hecht, 274 F. 177 ..... 31, 72
Craig v. Hecht, 282 F. 138 ..... 31, 72
Craig v. Hecht, 263 U.S. 255 ..... 11, 30, 31, 72, 73
Creasy, Ex parte, 184 S.W. 914 (Mo.) 50
Creely, In re, 97 P. 766 (Cal.) 15
Cuddy, Petitioner, 131 U.S. 280 ..... 16, 17, 57, 64, 65, 66
Cuyler v. Atlantic and North Carolina Railway, See Daniels, In re

Daniels, In re, 131 F. 95 63
Debs, In re, 158 U.S. 564 38
Dixon's Case, 3 Op. Atty. Gen. 622 ..... 77, 88
Drady v. District Court of Polk County, 102 N.W. 115 (Iowa) 16, 103
Dunham v. State, 6 Iowa 245 49
Dunnigan Sisters, The, 53 F. (2d) 502 14

Edwards v. Edwards, 100 A. 608 (N.J.Eq.) 14, 15
Emery v. State, 111 N.W. 374 (Neb.) 15
Eykelboom v. People, 206 P. 338 (Col.) 14

Fisher v. McDaniel, 64 P. 1056 (Wyo.) 16, 17
Fite, In re, 76 S.E. 397 (Ga.App.) 101
Ford v. State, 64 S.W. 879 (Tenn.) 48, 50
Fountain, In re, 108 S.E. 342 (N.C.) 17

Garner, Ex parte, 177 P. 162 (Cal.) 50
Gibson v. Tilton, 1 Bland 352 (Md.) 15
Gompers v. Bucks Stove and Range Company, 221 U.S. 418 ..... 3, 87
Gompers v. United States, 233 U.S. 604 3
Gorham, In re, 40 S.E. 311 (N.C.) 15
Green, Ex parte, 295 S.W. 910 81

PAGE

Gridley v. United States, 44 F. (2d) 716 15
Grossman, Ex parte, 267 U.S. 121, 75, 76, 77, 78, 81, 83, 84, 85, 86, 88, 89, 90, 91, 92, 95

Hale v. State, 45 N.E. 199 (Ohio) 112
Harrison v. Missouri, 10 Mo. 686 49
Hegelaw v. State, 155 N.E. 620 (Ohio A.) 15
Hickey, Ex parte, 4 Smeades and M. 751 (Miss.) 8, 19, 49, 77, 78, 79, 80
Hollingsworth v. Duane, Fed.Cas. 6,616 22
Holman. v. State, 5 N.E. 556 (Ind.) 103
Hudgings, Ex parte, 249 U.S. 378 ..... 14, 15
Hughes v. People, 5 Colo. 436 51

Independent Publishing Co., In re, 240 F. 849 63

Jarvis, Ex parte, 207 P. 494 (Cal.A.) 15, 16

Keeney v. United States, 17 F. (2d) 976 16
Kelly, In re, 243 F. 696 ..... 15, 16
Kelly v. Montebello Park Co., 141 Md. 194 ..... 51, 105
Kelly v. United States, 250 F. 947 ..... 15, 16
King v. Almon, Wilmot's Notes, 242 5
Kirk v. United States, 192 F. 173 67

Langdon v. Wayne Circuit Judges, 43 N.W. 310 (Mich.) 15, 17, 51
Lerch's Contested Election, In re, 21 Pa.Dist. 1113 15
Little v. State, 90 Ind. 338 ..... 17, 103

MacKnight, In re, 27 P. 336 (Mont.) 1
Magee, Ex parte, 242 P. 332 80
Marvin v. District Court of Polk County, 102 N.W. 119 (Iowa) 16
Mason, In re, 43 F. 510 77
Maulsby, Ex parte, 13 Md. 625 49
May, In re, 1 F. 737 63
Mays v. Willingham, 140 S.E. 789 (Ga.A.) 15
McCarthy v. State, 15 S.W. 736 (Tenn.) 16
McCaully v. United States, 37 App. D.C. 582 ..... 16, 17, 68
McCown, Ex parte, 51 S.E. 957 (N.C.) 111
McDougal v. Sheridan, 128 P. 954 (Ida.) 20, 34, 102
McLeod, Ex parte, 121 F. 130 ..... 66, 67
Michaelson v. United States, ex rel C., St. P., M. & O. Rwy. Co., 266 U.S. 42, 43, 48, 51, 71
Michaelson v. United States, 291 F. 940 43
Missouri Pacific Railway Co. v. Oglesby, 76 S.W. 623 (Mo.) 33
Moore et al, In re, 60 S.E. 946 (S.C.) 15
Moore v. Montana Ore Co., 105 F. 737 63
Morgan v. State, 105 S.E. 149 (Ga.App.) 17
Mullee, In re, Fed.Cas. 9,911 77

Neagle, In re, 135 U.S. 1 4
Nelson, In re, See People v. Doe
Nevitt, In re, 117 F. 448 ..... 75, 77, 82, 87

O'Connell v. United States, 40 F. (2d) 201 14
Odem, In re, 45 S.E. 569 (N.C.) 15, 16
Oxiles, In re, 29 Hawaii 323 15

Pacific Livestock Co. v. Ellison Ranching Co., 213 P. 700 ..... 45, 51
People ex rel. Nunns v. County Court, 176 N.Y.S. 858 14
People v. Doe, 196 N.W. 757 (Mich.) 14, 15
People v. Freeman, 256 Ill.A. 233 14
People v. Friedlander, 199 Ill.A. 300 14
People v. Hadesman, 223 Ill.A. 219 14
People v. Oyer Court, 4 N.E. 259 (N.Y.) 110
People v. Thierry, 17 P. (2d) 543 (Col.) 14
People v. Thompson, 17 P. (2d) 538 (Col.) 14
People v Wilson, 64 Ill. 195 19
Pierce v. United States, 37 App. D.C. 582 16

PAGE

Poulson, Ex parte, Fed.Cas. 11,350.....57, 59, 60, 61, 62, 65, 69
Powell v. State, 108 S.E. 464 (Ga.).....16
Prine et al. v. State, 108 C. 716 (Miss.).....17

Read and Huggonson, In re, See Roach v. Garvan
Respublica v. Oswald, 1 Dallas (U.S.) 319.....21
Respublica v. Passmore, 3 Yeates 441 (Pa.).....22
Richardson v. Commonwealth, 133 S.W. 213 (Ky.).....104
Richardson v. State, 158 S.E. 369 (Ga.A.).....16
Ricketts v. State, 77 S.W. 1076 (Tenn.).....15
Roach v. Garvan, 2 Atkyns 471.....5, 19
Robinson, Ex parte, 19 Wallace (U.S.) 505.....48, 60, 71
Rowan's Case, 4 Op. Atty. Gen. 458.....77

Sachs v. High Clothing Co., 108 A. 58 (N.J.Eq.).....14
Savin, In re, 131 U.S. 267.....1, 15, 16, 17, 57, 64, 65, 66, 67
Schulman, In re, 177 F. 191.....14
Scott v. State, 71 S.W. 824 (Tenn.).....16
Seastream et al v. New Jersey Exhibition, 61 A. 1041 (N.J.Eq.).....14
Sharp v. State ex rel. Cason, 49 S.W. 752 (Tenn.).....77, 80
Shortridge, In re, 34 P. 227 (Cal.).....52, 100
Sinclair v. United States, 279 U.S. 749.....17, 73
Sinnott v. State, 79 Tenn. (11 Lea) 281.....17
Smith v. Speed, 66 P. 511 (Okla.).....48, 50, 51
Soulard, Heirs of v. United States, 4 Peters 511 (U.S.).....26
St. James Evening Post Case, See Roach v. Garvan
State ex inf. Crow v. Shephard, 76 S.W. 79 (Mo.).....33, 34, 51
State ex rel. Ashbaugh v. Circuit Court, 72 N.W. 93 (Wis.).....7
State ex rel. Metcalf v. District Court, 155 P. 278 (Mont).....108
State ex rel. Rodd v. Verage, 187 N.W. 830 (Wis.)....3, 45, 76, 79, 82, 86, 94, 117
State ex rel. Spoffard v. Gifford, 12 P. 1060 (Mo.).....34
State ex rel. Van Orden v. Sauvinet, 24 La.Ann. 119.....77, 79, 80, 91, 92, 94
State ex rel. Webb v. District Court, 95 P. 593 (Mont.).....15, 16
State v. Ackerson, 25 N.J.L. 209.....17
State v. Blocker, 14 Ala. 450.....49
State v. Brewer, 114 A. 604 (Del.).....15
State v. Brownell, 154 P. 428 (Ore.).....16
State v. Broxson, 111 S. 611 (La.).....16
State v. Havel, 235 N.W. 584 (Neb.).....15
State v. Hunter, See Moore et al, In re
State v. Jones, 226 P. 433 (Ore.).....16, 17
State v. Kaiser, 23 P. 964 (Ore.).....113
State v. Kayser, 181 P. 278 (N.M.).....17
State v. Lazarus, 37 La.Ann. 314.....15
State v. Little, 94 S.E. 680 (N.C.).....17
State v. Magee Publishing Co. et al, 224 P. 1028 (N.M.),
35, 76, 77, 78, 79, 80, 90, 93, 94
State v. Moody, 196 N.W. 500 (S.D.).....14, 15
State v. Moore, 61 S.E. 463 (N.C.).....16
State v. Morrill, 16 Ark. 384.....47, 49
State v. Nelson and Baker, 150 N.W. 267 (N.D.).....111
State v. Nichols, 26 Ark. 74.....87
State v. Shumaker, 164 N.E. 408 (Ind.).....35, 36, 45, 81
State v. Shumaker et al., 163 N.E. 272 (Ind.).....35, 82, 93
State v. Tugwell and Baker, 52 P. 1056 (Wash.).....116
Stuart v. People, 3 Scammon 395 (Ill.).....49
Sturm et al., Ex parte, 152 Md. 115.....20

Tanner v. United States, 62 F (2d) 601.....17
Tate v. State ex rel. Raine, 177 S.W. 69 (Tenn.).....20, 114
Taylor v. Goodrich, 40 S.W. 515 (Tex.).....79, 81, 87, 91, 94, 95
Taylor v. State, 199 N.W. 509 (Neb.).....16, 17
Terry, Ex parte, 128 U.S. 289.....4
Thomas of Chartham v. Benet of Stamford, 24 Selden Society 185.....76
Toledo Newspaper Co. et al v. United States, 287 F. 986.....30, 70
Toledo Newspaper Co. et al v. United States, 247 U.S. 421....30, 63, 70, 71, 72, 73
Turk and Wallen v. State, 185 S.W. 472 (Ark.).....17, 48

PAGE

United States v. Anonymous, 21 F. 761....64, 70
United States v. Appel, 211 F. 495....14
United States v. Carroll, 147 F. 947....15, 17, 67
United States v. Craig, 266 F. 230....30, 31, 72
United States v. Dachis, 36 F. (2d) 601....14
United States v. Duane, Fed.Cas. 14,997....22
United States v. Gompers, 40 D.C. App. 293....3
United States v. Grossman, 1 F. (2d) 941....9, 77, 78, 81, 87
United States v. Holmes, Fed.Cas. 15,382....57, 60, 69
United States v. Huff, 206 F. 700....63, 67
United States v. Karns, 27 F. (2d) 453....14
United States v. McGovern, 60 F. (2d) 880....14
United States v. Sanders, 290 F. 428....31, 32, 74
United States v. Shipp et al, 203 U.S. 563....13
United States v. Shipp et al, 214 U.S. 386....13
United States v. Shipp et al, 214 U.S. 439....13
United States v. Shipp et al, 215 U.S. 586....13
United States v. Sullens, 36 F. (2d) 230....32, 33
United States v. Toledo Newspaper Co. et al, 220 F. 458, 10, 27, 28, 29, 30, 57, 62, 68, 69
United States v. Wayne, Fed.Cas. 16,654....22
United States v. Wilson, 7 Peters (U.S.) 150....84, 85

Van Dyke v. Superior Court, 211 P. 576 (Ariz.)....45, 51

Walton Lunch Co. v. Kearney et al, 128 N.E. 429....51
Weaver v. Hamilton, 2 Jones 343 (N.C.)....49
Weldon v. State, 234 S.W. 466....48
Wells, Ex parte, 18 Howard (U.S.) 307....84, 85
Whetstone, In re, 36 P. 633 (Utah)....16, 17
Wilson v. Joughin, 141 S. 182 (Fla.)....15, 16
Wyatt v. People, 28 P. 960 (Colo.)....100

Yates, Case of, 4 Johns. 316 (N.Y.)....24
Yates, Case of, 16 Johns. 337 (N.Y.)....24
Young v. State, 154 N.E. 478 (Ind.)....14, 15

Problems *of* Contempt of Court

CHAPTER I

The Summary Contempt Jurisdiction

There are any number of definitions of the term "contempt of court," but probably the simplest one is "disregard of the authority of the court." [1] But a definition of itself is of but little assistance in determining the scope of the contempt power. This information may only be secured by considering the application of the definition to the various acts which have been held to constitute contempt of court. In order, therefore, to get a clear picture of the scope of the summary jurisdiction one must pass from definition to enumeration.

Acts Constituting Contempt of Court

The number of acts which may subject one to punishment for contempt of court is legion, and these acts vary greatly both in substance and in their reprehensible character. Thus the contemptuous act may range all the way from such trifling incidents as thoughtlessly acclaiming a verdict of acquittal in a criminal case, to such serious criminal offenses as willfully assaulting a judge, forcibly rescuing a prisoner from custody, or attempting to influence the outcome of pending litigation by intimidation or bribery.

The most important of these contemptuous acts, if one judges by the number of such cases, are disobedience of the process, order, command, mandate, judgment or decree of court, misconduct in the presence of the court, misconduct of officers of the court, attempts to obstruct, hinder or influence the administration of justice, the dissemination of contemptuous publications, and the removal, destruction or secretion of the subject matter of pending litigation.

It is perfectly obvious that, if a court is to be effective, it must have the power to keep its proceedings free from disorder and interruption, and must possess the power to enforce any lawful order that it may be called upon to make. Thus a court has power to punish any noise, riot, affray, or insulting or contemptuous languague used in its presence or so near physically to the courtroom as to interrupt the proceedings. The power of the court also extends to the punishment of reprehensible conduct in any portion of the building which is set aside for the use of the court and its officers, and the grand and petit juries.[2] The power to enforce court orders or decrees by contempt may be exercised in connection with hundreds of such orders, but the most prominent usages are to punish injunction violations, refusal to testify or to obey a subpoena or subpoena duces tecum, failure to comply with any equity decree or a mandamus, and failure to pay a judgment in an action ex delicto or to pay the costs assessed in litigation.

The court likewise has the power to punish the misdeeds of its officers, servants, jurors and persons presuming to act in an official capacity.[3]

---

[1] In re MacKnight, 27 P. 336 (Mont.).
[2] Savin, Petitioner, 131 U.S. 267.
[3] See 6 Ruling Case Law, Contempt, secs. 7 and 8; Rapalje on Contempt, ch. 2, pt. 2.

Under this power courts may punish bailiffs, clerks, jailers, sheriffs, constables, referees, trustees, masters in chancery, arbitrators, guardians, executors, administrators, court stenographers, attorneys at law, solicitors, jurors, and appraisers, as well as persons practicing law without having been admitted to the bar. Thus a sheriff is liable to punishment for contempt, for failure to protect a prisoner; a jailer, for harsh treatment of a prisoner; an attorney, for malpractice or for failure to pay money over to a client; and a clerk, for fraudulently misdating a pleading.

Courts also exercise the contempt power in order to punish those who attempt to hinder, obstruct or influence the due administration of justice. These acts include resistance to the execution of process, attempts to suppress or falsify evidence, interference with court officials or with the property they administer in custodia legis, forcible rescue of a prisoner, attempts to bribe or intimidate a witness or juror, attempts to detain parties, attorneys, or witnesses, deliberate evasion of process and perjury. In the disputed class is also the punishment of publications as contempt. Publications which criticize a court or judge or which attempt to degrade the court, the publication of prejudicial matter not receivable in evidence, and attempts by publications to influence the decision in pending litigation are punishable.[4]

There are also a number of other contemptuous acts such as abstracting court records and substituting other papers therefor, procuring the false satisfaction of a judgment, breaking open sealed papers, bringing a fictitious or unauthorized suit, giving fictitious security, making a false affidavit, procuring a continuance by a feigned illness, advising the disobedience of a court order, lynching one held for trial, purposely disqualifying oneself to escape jury service, filing scandalous or contemptuous pleadings, and allowing oneself to be rescued, or escaping, from custody.[5]

Classification of Contempts

It may be pointed out that the contempt power is utilized for two different purposes, namely, to punish and to coerce.[6] In the main this distinction in purpose may be seen in the division of contempts into two basic classes, criminal contempts, which are generally punitive, and civil contempts, which are generally coercive.

Another general distinction between these two types of contempts is the character of the act complained of, for criminal contempts are generally the result of some active disrespect towards the court, while civil contempts are generally of a passive character only.

Criminal contempts embrace all contemptuous acts in which the primary purpose of the prosecution is to punish in order to vindicate the authority of the court. In such cases the prosecution is undertaken in order to deter others from the commission of like acts, and to punish the contemnor for his contemptuous act although occasionally the purpose will actually be coercive, in order to elicit information from a recalci-

[4] This grouping is the author's; many of these acts are listed otherwise by other writers.

[5] These contemptuous acts were gleaned from cases in 13 Corpus Juris, title Contempt.

[6] 6 Ruling Case Law, Contempt, sec. 3.

trant witness. Both in substance and in purpose criminal contempts are very analogous to ordinary criminal offenses, so analogous in fact, that it appears that contempt procedure frequently offers an alternative method for the punishment of crime—a very effective method, because of the absence of trial by jury.

In the vast majority of cases, civil contempts are the result of a failure of a party to a civil suit to comply with an order of court, made therein for the benefit of the other party. In this type of case the failure to comply is only technically treated as a contempt, in order that the suitor may avail himself of the contempt power as an extraordinary method of enforcing his own personal rights, and the action is not punitive to uphold the authority of the court. This species of contempt is most frequently found in actions in equity, because of the peculiar *in personam* character of equity orders and decrees.[7] Occasionally however one finds civil contempt cases in which, instead of a failure to obey, there has been a disobedience of a court order. In such cases the result is oftentimes punitive rather than coercive.[8]

The division of contempts into civil and criminal contempts has been subject to some criticism, and it must be admitted that the border line between the two classes is vague and uncertain, and that violations of injunctions and other orders of court may constitute either a civil or a criminal contempt or both.[9]

Contempts are also classified as direct or indirect, depending upon whether they take place in the presence of the court or not. Thus direct contempts properly embrace only those acts of which the court itself has personal knowledge, which take place in the presence of the court or so near thereto physically as to interrupt the proceedings. Indirect contempts, on the other hand, embrace all contemptuous acts which do not take place in the presence of the court, and of which the court itself has no knowledge.[10]

Nor can this classification be considered as of much actual value, for it offers no hard and fast rule of determination in every case. In the classification of contemptuous acts as direct or indirect there has always been a conflict between two ideas, the actual and the constructive presence of the court. Numerous acts which one would expect to be indirect contempts have been held to constitute direct contempts because of their obstructive effect. This line of reasoning seems to be founded upon an analogy to the doctrine of constructive presence as it is found in the criminal law. This disposition to broaden the scope of direct contempts by the inclusion of acts only constructively committed in the presence of the court seems to presage the eventual extinction of the generally accepted differentiation between direct and indirect contempts.

---

[7] Snell's Principles of Equity, p. 5.

[8] State ex rel. Rodd v. Verage, 187 N.W. 830 (Wis.).

[9] As in the numerous proceedings against Samuel Gompers for disobeying an injunction issued on behalf of the Bucks Stove and Range Company. After the reversal in Gompers v. Bucks Stove and Range Company, 221 U.S. 419, of a conviction for civil contempt in Bucks Stove and Range Company v. Gompers, 33 D.C. App. 516, Gompers was tried for criminal contempt in United States v. Gompers, 40 D.C. App. 293, and again tried in Gompers v. United States, 233 U.S. 604. Both proceedings were by the same attorneys, and upon the same evidence.

[10] Rapalje on Contempt, sec. 22.

Procedure and Punishment

The procedure employed in the trial and punishment of contempts of court depends upon the manner in which one classifies the contemptuous acts, for there are a number of procedural differences which depend upon the type of the contempt.

In civil contempt cases the prosecution is generally commenced by the filing of a complaint, by the other party to the suit, setting forth the failure to obey or the disobedience of the court's order, and asking that the court issue an order to the contemnor directing him to show cause, if any there may be, why he should not be adjudged in contempt. Upon the filing of such a compliant the court issues a show cause order, and sets a date for a hearing upon the complaint and answer. At the hearing, which is by the court without a jury, both sides may be represented either in person or by counsel and may introduce evidence proving or disproving the contempt, or in mitigation of the offence, and the court may examine the accused as to his conduct.[11] If it be shown that the defendant has willfully failed to comply with a court order he may be ordered attached for his contempt and may be imprisoned until he complies with the court order or gives security that he will comply therewith, and pays the costs of the contempt proceedings. If the contempt be a disobedience of a court order the defendant may be attached and imprisoned until he makes reparation to the injured party, if within his means to do so, and until he pays the costs of the contempt proceedings. In case he cannot make good the damage the defendant may be imprisoned for a definite period as a punishment for his conduct.[12]

In criminal contempts the proceedings depend upon whether the contempt is classified by the court as direct or indirect. In direct contempts the procedure is very summary, as the contemnor may be jailed without a hearing and without opportunity to defend himself. In such cases the court may order the bailiff to attach the contemnor and bring him before the bar of the court for justice. The court may thereupon immediately pass sentence, and may either fine or imprison the accused.[13]

In indirect contempts the procedure employed is like that in civil cases in that a show cause order must be served upon the defendant and there must be a hearing. The trial is by the court [14] without the intervention of a jury, and the accused may be forced to answer interrogatories as to his guilt or innocence. The court may content itself with an apology or disclaimer of intent by the contemnor, which is termed purging the contempt, or may punish by fine or imprisonment within the court's discretion, in the absence of a statute to the contrary.[15]

Conventional Notions as to Source of Contempt Power

Considering the criminal character and the arbitrary nature of the contempt power, one would naturally believe that a jurisdiction so

---

[11] See Rapalje on Contempt, pt. 3.

[12] See Rapalje on Contempt, ch. 6.

[13] Ex parte Terry, 128 U.S. 289; this was the beginning of the hostility between Judge Terry and Judge Field which ended in Terry's death at the hands of Neagle, employed to guard Judge Field. See In re Neagle, 135 U.S. 1.

[14] Where personal feelings may enter the case another trial judge should be substituted, Cooke v. United States, 267 U.S. 517.

[15] 13 Corpus Juris, Contempt, sec. 140.

foreign to the whole spirit of Anglo-American jurisprudence would be based upon an unassailable foundation, well supported by historical research. But the members of the judiciary have been so well pleased with their summary powers that they seem never to have undertaken a searching investigation into the history of the contempt power.

The modern law of contempt is based by the judiciary upon appeals to the inherent necessity of such a summary power, and the antiquity of this jurisdiction rather than upon historical evidence. The present law of contempt in this country has been founded, for the most part, upon the statements of Blackstone in his Commentaries [16] and Sir John Eardley-Wilmot in King v. Almon [17] which concerned a contempt by publication. Oddly enough, neither of these authorities forms a legal precedent, for the opinion of Justice (afterwards Lord) Wilmot was never delivered, as the case was dismissed because of technical difficulties. It also appears that in all probability the statements made by Blackstone merely represented the views of Judge Wilmot,[18] and that it may be said that the present scope of the summary power is due almost exclusively to the opinion of one man.[19]

It was the opinion of Judge Wilmot that the power of the court rested upon the antiquity of the jurisdiction:

> The power which the courts in Westminster Hall have of vindicating their own Authority, is coeval with their first Foundation and Institution; it is a necessary Incident to every Court of Justice, whether of Record or not, to fine and imprison for a Contempt to the Court, acted in the face of it, 1 Vent. 1.
>
> And the issuing of Attachments by the Supreme Courts of Justice in Westminster Hall, for Contempts out of Court, stands upon the same immemorial Usage as supports the whole Fabrick of the Common Law....
>
> I have examined very carefully to see if I could find out any vestiges or traces of its introduction, but can find none. It is as ancient as any other part of the Common law.
>
> ... The mode of proceeding by Attachment stands upon the very same foundation and basis as Trials by Jury do,—immemorial Usage and Practice....[20]

He also based the power to some extent upon the fact that the superior courts of the realm had at one time been presided over by the King in person and that they still occupy the position of the sovereign:

> By our Constitution, the King is the Fountain of every Species of Justice, which is administered in this Kingdom. 12 Co. 25.
>
> The King is "de Jure" to distribute Justice to all his subjects; and, because he cannot do it himself to all persons, he delegates his Power to his Judges, who have the custody and guard of the King's Oath, and sit in the Seat of the King "concerning his Justice." [21]
>
> But a Libel upon a Court is a Reflection upon the King ... which is imputing to the King a Breach of that Oath, which he takes at the Coronation, "to administer Justice to his people"... [22]

---

[16] Blackstone's Commentaries, bk. 4, 283-288.

[17] Published with other opinions in 1802 as Wilmot's Notes, pp. 242-271.

[18] See Fox, Contempt of Court (Oxford 1927), pp. 21, 22.

[19] Regard should also be paid to an equity case, Roach v. Garvan, 2 Atkyns 471, opinion by Chancellor Hardwicke.

[20] Wilmot's Notes, p. 254.

[21] Ibid, p. 255.

[22] Ibid, pp. 270, 271.

CHAPTER II

Objection to Summary Procedure in Indirect Contempts

Although both the contempt power and procedure are undoubtedly of an extremely orbitrary character,[1] the authority of the judiciary to punish direct contempts, that is, contempts committed in the actual presence and hearing of the court, has never been seriously questioned, for it has generally been admitted that courts must possess power to keep their proceedings free of interruption. Practically the only person who has ever seriously advocated the abolition of the power to punish for contempt was Edward Livingston,[1*] who maintained that this power was unnecessary since the authority to order the removal of contemnors and their commitment to prison to await punishment by a jury would be sufficient.[2]

The power to proceed in summary[3] fashion to try and punish for contemptuous acts out of court has, however, been the subject of criticism since before the American Revolution.[4] Criticisms of the exercise of the summary jurisdiction in that class of contempts known as indirect, constructive or consequential contempts have been of three types: attacks upon the "props" of the contempt power; attacks based upon the criminal character of these contempts and the non-observance of constitutional guarantees applicable to criminal offenses; and attacks upon the actual operation of the power.

Attacks upon Conventional Views as to the Contempt Power

The so called "props" upon which the judiciary have always supported their contempt power whether the contempt be direct or indirect, are twofold: the inherent necessity for the existence of such a power if courts are to properly exercise their functions, and the antiquity of the summary jurisdiction. The validity of both of these claims, at least in support of the present limits of the contempt power, has been bitterly denounced by those of more liberal sentiment and by investigators of the subject.

It has been pointed out that the courts have, by their own actions, in a number of different ways refuted the contention that it is absolutely necessary that they have power to punish contemptuous acts committed out of court. Thus it has been claimed that, by according the defendant in indirect contempts the right to an order to show cause and an opportunity to prepare and present a defense, the courts have themselves recognized that there is no necessity for immediate action such as characterizes direct contempts, and that there is, therefore, no reason why

---

[1] In State ex rel. Ashbaugh v. Circuit Court, 72 N.W. 193 (Wis.), the court characterized the contempt jurisdiction as "nearest akin to despotic power of any power existing under our form of government."

[1*] Complete Works of Edward Livingston on Criminal Jurisprudence, vol. 1, p. 264.

[2] Edward Livingston, A System of Penal Law for the United States of America, ch. 10.

[3] Summary proceeding is defined by Bouvier in his Law Dictionary, vol. 3, p. 3182, as: A form of trial in which the ancient established course of legal proceedings is disregarded, especially in the matter of trial by jury.

[4] See the letter of Lord Erskine, famous English liberal jurist, set forth in Stansbury, Report of the Trial of Judge Peck, p. 398.

the contempt trial should be of a summary nature without the right of trial by jury.[5] Likewise it has been pointed out that if this power were inherently necessary, that no court could carry out its functions without it. However, this power has generally been denied to inferior courts,[6] and yet not only these tribunals but also superior courts whose contempt jurisdiction has been curtailed by constitutional or statutory provisions, do not appear to have experienced any actual difficulty in transacting their judicial duties.[7] It would seem, therefore, that the necessity argument is more theoretical than real.

The validity of the beliefs of Blackstone and Wilmot as to the antiquity of the contempt jurisdiction, in its present wide scope, has always been subject to question because of the failure of these two writers to support their statements by earlier authorities. Indeed in order to reach their conclusions both were forced to disregard the authority of an earlier justice, Gilbert, who, it seems, based the power to punish contempts committed out of court upon the Statute of Westminster 2, 13 Edward I, chapter 39, which provided that sheriffs were to certify the names of resisters of process, and their aiders and abettors, to the court so that they might be punished.[8]

Although the views of Blackstone and Wilmot were not unchallenged,[9] their incorrectness was not proved beyond question until the early part of the present century, by the publication of a series of articles by Sir John Fox,[10] in which it was shown that a minute review of the rolls of the early common law courts failed to show punishment of contempts out of court without a jury trial unless the accused was an officer of the court or unless he confessed his guilt.

The widening of the scope of the summary contempt jurisdiction seems to have been the result of three forces: the influence of equity procedure;[11] the summary jurisdiction of the Court of the Star Chamber[12] which was transferred, upon its abolition in 1640,[13] to the Court of the Kings Bench; and to the natural inclination of men to extend their power.[14]

In reality the power of the judiciary to punish contemptuous acts appears to have been an offshoot of the power anciently possessed by the British sovereigns to punish summarily contempts against majesty, and a consideration of the power of the king and the jurisdiction of the courts

---

[5] Thomas M. Anderson, Jury Provision Statutes, 11 Virginia Law Review 639.
[6] 13 Corpus Juris, Contempts, sec. 63, and cases cited.
[7] John L. Thomas, The Law of Constructive Contempt, pp. 67-72.
[8] Gilbert, History of the Court of Common Pleas, ch. 3. This ancient provision may be found in the statutes of a number of the states at present.
[9] See Ex parte Hickey, 4 Smeades & M. (Miss.) 751; and the views of the House Managers in the Peck impeachment. (Stansbury, Trial of Judge Peck.)
[10] The King v. Almon, 24 Law Quarterly Review 84, 266; Eccentricities of the Law of Contempt, 36 Law Quarterly Review 394; The Nature of Contempt of Court, 37 Law Quarterly Review 191; The Practice in Contempt of Court Cases, 38 Law Quarterly Review 185; The Writ of Attachment, 40 Law Quarterly Review 43; The Summary Process to Punish Contempts, 25 Law Quarterly Review 238, 254; published in a volume, The History of Contempt of Court, in 1926.
[11] Blackstone Commentaries, bk. 4, p. 288.
[12] Fox, p. 34.
[13] 16 Charles I, chapters 10 and 11.
[14] Speech of Storrs in Stansbury, p. 289.

of today shows a surprising parallel.[15] Wilmot expressly recognized that the power of the law courts to punish contemptuous publications was due to the fact that the judges "sit in the seat of the King concerning his Justice."[16] It is perfectly evident that the contempt power of equity courts originated in the same manner, for the Chancellor dispensed justice in the place of the king, and his orders obtained their validity because of the use of the Great Seal, disobedience of which was considered a grievous contempt of the King.[17] It is only natural that the application in the nineteenth and twentieth centuries of the authority and ideology of an unlimited sovereign has been the subject of grave criticism,[18] and naturally this criticism is particularly evident in the American system of government.

Attacks Based on Criminal Nature of Contempts

The courts have repeatedly recognized that criminal contempts are criminal offenses,[19] and a consideration of their character certainly proves that they are very similar to other unlawful acts, in that there is a prosecution looking to the punishment of the offender, not only as retribution for his misdeeds but also to deter the commission of acts of a similar character by others. Yet although frequently admitting the criminal character of contempts, the courts have never recognized that constitutional guarantees applied to contempt prosecutions.

The contempt power may be said to invade five of the customary constitutional guarantees: trial by jury,[20] freedom from self incrimination,[21] double jeopardy,[22] excessive punishments,[23] and, in some cases, freedom of speech and press.[24] The contempt power may also be said to violate the due process of law clause.[25]

Of these the most important guarantee is trial by jury, because of the common belief of Anglo-Saxons that trial by jury is the guarantee of their freedom, that it is the dearest right, forced by might from reluctant medieval monarchs and nobles, and made more secure by the abolition of the Court of the Star Chamber and the overthrow of the Stuarts. In this country trial by jury conjures up remembrances of the struggles for freedom against the determination of libels as a matter of law instead of fact.[26] In addition, the ordinary man, who is more realtistic than casuistical, sees only the fact that, in the ordinary out-of-door contempt, a man has been punished for a criminal act, without trial by jury, a right which he is entitled to believe cannot be constitutionally taken away from him. To the ordinary man the judiciary seems to have

---

[15] This ancient offense is set forth fully in Blackstone, bk. 4, pp. 121-126. See particularly sec. 5, Contempts Against the King's Palaces or Courts of Justice.
[16] King v. Almon, Wilmot's Notes, p. 255.
[17] C. C. Langdell, A Summary of Equity Pleading, sec. 38.
[18] 2 Tennessee Law Review 215.
[19] 13 Corpus Juris, Contempt, sec. 7.
[20] United States Constitution, Amendment, art. 5.
[21] Ibid.
[22] Ibid.
[23] Ibid, Amendment, art. 8.
[24] Ibid, Amendment, art. 1.
[25] Ibid, Amendment, art. 5.
[26] Thomas, The Law of Constructive Contempt, Appendices C, D, E, F.

simply legislated unto itself the power to dispense criminal law in defiance of constitutional guarantees. Morever, his point of view is certainly substantiated by the punishment of violations of the Prohibition Laws as legislative authorization of contempt.[27]

The second point of attack is generally against the use of interrogatories in contempt prosecutions. Under the present concepts of the contempt power the court has the authority to examine the accused as to his guilt or innocence of the charge, and the defendant must either answer these questions or be guilty also of a direct contempt of court. This power has always been open to question, and even Blackstone, staunch supporter of judicial authority, was forced to admit in his Commentaries:[28]

It cannot have escaped the attention of the reader that this method of making the defendant answer upon oath to a criminal charge is not agreeable to the genius of the common law in any other instance.

It may also be pointed out that in Blackstone's time the contemnor could secure a jury trial in the law courts by swearing that he had not committed the contempt, for his answers could not be traversed and the contempt proven, so that the only prosecution possible was for perjury, in which case he was entitled to a trial by jury. At the present time this ancient rule is no longer in force, having been gradually dropped by judicial decision.[29]

Objection has also been taken to the contempt jurisdiction upon constitutional grounds in that punishment for many of the more serious out-of-door contempts also expose the accused to double punishment for the same offense by prosecution in criminal proceedings. Thus the contemnor may be twice tried and punished for the same act,[30] simply because one act is termed an offense against the judicial authority of the state, whereas the other is denominated an offense against the state itself. So if the contemptuous act committed by the contemnor was the unlawful sale of liquor he may be punished twice for the one sale, once because in violation of a law of the legislature, and once because in violation of a "law" of the judiciary.[31]

Objection to the summary jurisdiction may also be taken upon the grounds that the punishment for contempt violates the excessive punishment clause of the constitution. This is of course only a minor consideration, which may be raised in but a few instances. This objection is due to the fact that in some jurisdictions, such as the Federal, the judiciary has the authority to fix the amount of punishment within its own discretion, and that occasionally this punishment has been rather severe, as in the Toledo Newspaper Case[32] in which the paper was fined the sum of $7,500.00.

---

[27] As in the case of United States v. Grossman, 1 F. (2d) 941.

[28] Blackstone's Commentaries, bk. 4, p. 285.

[29] See Curtis & Curtis, Story of a Notion in the Law of Contempt, 41 Harvard Law Review 51.

[30] 8 Ruling Case Law, Criminal Law, sec. 119.

[31] 27 U.S.C.A. 38.

[32] United States v. Toledo Newspaper Company et al., 220 F. 458.

Attacks upon the Practical Operation of the Power

Probably the strongest criticism of the contempt power has been based upon the practical operation of the power, that is, the fact that in one sense of the term, a judge may be said to sit in his own case, and cannot divorce himself absolutely from all personal feeling.[33] Thus it may be said that the accused is deprived of the right to a fair and impartial trial in a case of a criminal character. It has also been pointed out that the judge is generally the prosecutor, and is also judge, jury and executioner, and that there is practically no chance for the defendant to escape conviction and punishment, except by making an abject apology, since an acquittal would place the court in the embarrassing position of admitting that the proceedings were without merit.[34]

It is especially true that in certain instances, such as where the contemptuous act was a criticism of the conduct or action of a judge, there is undoubtedly a disposition upon the part of the court to vindicate itself by punishing the accused.[35]

Objection to Particular Contempts

The main attacks upon the punishment of indirect contempts have been against the punishment of publications,[36] against the punishment of acts obstructive of justice which are also grave crimes,[37] and against the use of the power with reference to certain classes of injunctions.[38] The power of the court, however, has been subject to question in all cases in which the contemptuous act was the commission of an unlawful act,[39] particularly so if the unlawful act was of a serious character.

---

[33] Duane McCracken, Strike Injunctions in the New South, p. 138; Harold J. Laski, Procedure for Constructive Contempt in England, 41 Harvard Law Review 1031; O. H. Brinkman, Contempt of Court, 18 Georgetown Law Review 287.

[34] Laski, p. 1038.

[35] See the concurring opinion of Chief Justice Taft in Craig v. Hecht, 263 U.S. 255, 279.

[36] See Chapter IV.

[37] See Chapter III.

[38] See Chapter V.

[39] It should be noted that the power to punish perjury as contempt has been open to grave question, but is not here discussed as it is a direct contempt. See 13 Corpus Juris, Contempt, sec. 31.

CHAPTER III

Serious Crimes Punishable as Contempt of Court

There is little doubt that the strongest objection to the contempt jurisdiction is that, in a proceeding of a highly criminal character, the accused is denied the right of trial by jury and the protection of other of the constitutional guarantees vouchsafed to those charged with criminal offenses. All contempts of court may be viewed as criminal offenses since they are generally punishable by indictment under the common and statute law,[1] and these acts may range all the way from disorderly conduct to murder.[2] However it has been almost universally recognized that the judiciary must have the power to punish summarily criminal acts of a petty character. But whether the judiciary should possess the same power over acts of a serious criminal character has been the subject of much debate.

Courts possess the power to punish a number of criminal offenses as contempts either as violations of orders[3] or upon the theory that the contempt jurisdiction embraces all acts which may be said to have a tendency to obstruct the administration of justice. Among the more serious criminal offenses which fall within this obstructive category are perjury and subornation of perjury, bribery or attempted bribery, intimidation, seeking to unlawfully influence jurors, and the suppression of evidence. All of these offenses may be punished summarily as contempts as well as, and in addition to, the remedy by indictment, for in point of law the accused is deemed to have committed two separate and distinct offenses, one against the state, the other against its judiciary.[4]

Perjury and Subornation of Perjury

One of the greatest problems which faces courts today is the prevalence of perjured testimony,[5] which reaches such proportions as to nearly prevent the establishment of the facts. Because of the fact that perjury is a felony in the majority of the states, and abounds in technicalities so that there is grave uncertainty as to conviction,[6] many judges, exasperated by constant flagrant perjuries, have considered that the giving of false testimony constitutes a contempt of court punishable summarily.[7]

---

[1] See Appendix B, Page 99.

[2] As in the case of United States v. Shipp et al, 203 U.S. 563, 214 U.S. 386, 214 U.S. 439, 215 U.S. 586, where the Supreme Court considered as a contempt the lynching of a negro after an appeal had been taken to that court from a conviction of rape.

[3] This question has been of great importance in the violation of labor injunctions, and has culminated in efforts to pass legislation granting a trial by jury where the contemptuous act also constitutes a criminal offense. Chapter V.

[4] 16 Corpus Juris, Criminal Law, sec. 362.

[5] See Perjury in Judicial Proceedings, 64 United States Law Review 1.

[6] Willard L. King, Perjury in Illinois, 17 Illinois Law Review 596, 597.

[7] The punishment of perjury as contempt has been particularly important in the examination of bankrupts in the United States District Courts. A number of such cases may be found in an annotation in 11 American Law Reports Annotated 342, at page 344.

Courts have generally recognized two types of perjuries [8] as contempt: swearing to false affidavits,[9] and giving false testimony either in court,[10] or before the grand jury,[11] although there is a wide difference of opinion among jurists as to the source of the power. This divergence of opinion may be noticed by comparing the statements found in two well known legal compilations. Thus in Corpus Juris it is stated that—

> Ordinarily false swearing by a witness is held to be such an obstruction of justice as to constitute a direct contempt of court.[12]

while in Ruling Case Law it is stated—

> The weight of authority may be said to favor the position that testimony which is obviously false or evasive is equivalent to a refusal to testify, and punishable as contempt.[13]

Likewise jurists differ as to whether the source of the power to punish perjury arises from its obstructive characteristics or from the power of the courts to elicit information from recalcitrant witnesses.

There is also some difference of opinion as to whether this obstructive quality will be assumed or whether this must be actually shown in each instance. Thus the Supreme Court of the United States, speaking through Chief Justice White in the case of Ex parte Hudgings, said:

> In order to punish perjury in the presence of the court as a contempt there must be added to the essential elements of perjury under the general law the further element of obstruction to the court in the performance of its duty. It is true that there are decided cases which treat perjury, without any other element, as adequate to sustain a punishment for contempt. But the mistake is, we think, evident, since it either overlooks or misconceives the essential characteristic of the obstructive tendency underlying the contempt power, or mistakenly attributes a necessarily inherent obstructive effect to false swearing.[14]

In some cases the alleged obstructive act has been taking up the time of the court in useless investigation,[15] and in others, the attempt to block inquiry.[16] Ordinarily to be punishable as contempt perjury must be obstructive, must be known judicially to be false, and must concern a

---

[8] The punishment of jurors for false answers upon voir dire examination is not here considered as it falls more properly within the powers of courts to control jurors. See People v. Hadesman, 223 Ill.A. 219; People ex rel. Nunns v. County Court, 176 N.Y.S. 858; Clark v. United States, 61 F. (2d) 695.

[9] Carter v. Commonwealth, 32 S.E. 780 (Va.); United States v. Karns, 27 F. (2d) 453; State v. Moody, 196 N.W. 500 (S.D.); Sachs v. High Clothing Company, 108 A. 58 (N.J.Eq.); Seastream et al. v. New Jersey Exhibition Company, 61 A. 1041 (N.J.Eq.); People v. Thompson, 17 P. (2d) 538 (Col.); Same v. Thierry, idem 543 (Col.); Chicago Directory Company v. United States Directory Co., 123 F. 194 (Fabrication of exhibit).

[10] Young v. State, 154 N.E. 478 (Ind.); People v. Doe, 196 N.W. 757 (Mich.); Becker v. A., B. & B. Realty Co., 152 A. 241 (N.J.Eq.); Edwards v. Edwards, 100 A. 608 (N.J.Eq.); Eykelboom v. People, 206 P. 338 (Col.); People v. Freeman, 256 Ill.A. 233; People v. Friedlander, 199 Ill.A. 300; Blankenburg v. Commonwealth, 172 N.E. 209 (Mass.); Ex parte Hudgings, 249 U.S. 378; The Dunnigan Sisters, 53 F. (2d) 502; United States v. McGovern, 60 F. (2d) 880; Blim v. United States, 68 F. (2d) 484.

[11] United States v. Dachis, 36 F. (2d) 601; O'Connell v. United States, 40 F. (2d) 201.

[12] 13 Corpus Juris, Contempt, sec. 31.

[13] 6 Ruling Case Law, Contempt, sec. 10.

[14] 249 U.S. 378, 383-4.

[15] People v. Freeman, supra; Blankenburg v. Commonwealth, supra, investigation of fraudulent claim to inheritance.

[16] United States v. Appel, 211 F. 495; In re Schulman, 177 F. 191.

material matter.[17] There are two decisions, however, which hold that perjury cannot be punished as contempt.[18]

In several of these cases fairly heavy punishments have been imposed by the courts, by the imposition of fines up to $1,000 and imprisonment up to three months.[19] It would seem that the power of the courts to punish perjury as contempt is a most excellent weapon for the fight against perjurers,[20] but it should not be overlooked that according to the Supreme Court the power might become a legal thumbscrew:

> When a court entertained the opinion that a witness was testifying untruthfully the power would result to impose a punishment for contempt with the object or purpose of exacting from the witness a character of testimony which the court would deem to be truthful, and thus it would come to pass that a potentiality of oppression and wrong would result and the freedom of the citizen when called as a witness in a court would be gravely imperiled.[21]

In like manner the procuration of perjured testimony is punishable as a contempt of court.[22]

Attempts to Influence Verdict of Juror

One rather common obstruction of justice with which the courts have frequently come into contact has been the attempt to influence the verdicts of juries or individual jurors by bribery [23] or other unlawful influence. These unlawful influences have varied greatly including such acts as drinking with jurors and offering to procure them introductions to members of the legislature,[24] telling jurors that he wouldn't have prosecuted defendant had he known him and that they should acquit; [25] telling juror that speaker couldn't believe state witness,[26] drinking with juror who refused to listen to any proposition,[27] gift of carton of cigarettes and liquor to bailiff for the jury,[28] the all night entertainment of a juror,[29] asking jury not to convict friend [30] or juror to do all he could for friend [31] or of the dearness of the defendant [32] or that he didn't want the defendant electrocuted.[33] It is also a contempt to corruptly influence a grand juror.[34]

---

[17] Hegelaw v. State, 155 N.E. 620 (Ohio App.).

[18] State v. Lazarus, 27 La. Ann. 314; In re Lerch's Contested Election, 21 Pa. Dist. 1113. The decision in the latter case was probably due to the strict statute limiting the contempt powers of the courts of the state.

[19] Young v. State, supra, $500 and 3 months (statutory limit); People v. Doe, supra, and Becker v. A., B. & B. Realty Co., supra, 30 days; State v. Moody, supra, $200; and Chicago Directory Company v. United States Directory Company, supra, $1000 and 10 days.

[20] Lane, Vice Chancellor, in Edwards v. Edwards, supra.

[21] Ex parte Hudgings, supra, p. 384.

[22] Beattie v. People, 33 Ill. A. 651; Gibson v. Tilton, 1 Bland (Md.) 352; State v. Havel, 235 N.W. 584 (Neb.); In re Oxiles, 29 Hawaii 323; Ricketts v. State, 77 S.W. 1076 (Tenn.).

[23] Wilson v. Joughin, 141 S. 182 (Fla.); Langdon v. Wayne Circuit Judges, 43 N.W. 310 (Mich.); State ex rel. Webb v. District Court, 95 P. 593 (Mont.); United States v. Carroll, 147 F. 947; In re Savin, 131 U.S. 267; In re Gorham, 40 S.E. 311 (N.C.)

[24] In re Kelly, 243 F. 696; Kelly v. United States, 250 F. 947.

[25] Ex parte Jarvis, 207 P. 494 (Cal.App.).

[26] State v. Brewer, 114 A. 604 (Del.).

[27] Emery v. State, 111 N.W. 374 (Neb.).

[28] Mays v. Willingham, 140 S.E. 789 (Ga.App.).

[29] In re Odum, 45 S.E. 569 (N.C.).

[30] In re Creely, 97 P. 766 (Cal.).

[31] In re Moore et al., 60 S.E. 946 (S.C.).

[32] Gridley v. United States, 44 F. (2d) 716.

[33] Wilson v. Joughin, supra.

[34] Pierce v. United States, 37 App. D.C. 582.

It is likewise a contempt of court to endeavor to influence prospective jurors by asking them to favor defendants [35] by expressing sympathy for the defendant,[36] by attempting to interest juror in proposition and telling him that defendant wasn't so bad,[37] by discussing the case with or before jurors,[38] by giving a member a paper constituting a partial defense of the charge,[39] and an endeavor to get jurors to suppress their knowledge of defendant so as to be chosen for jury service.[40]

All of these attempts to interfere with the administration of justice by corrupting or influencing jurors has called for the imposition of the heaviest penalties, and in the absence of statutory restrictions courts have imposed fines up to $500, and in one case imprisoned up to one year.[41]

Attempts to Prevent Attendance of Witnesses and Parties

A situation somewhat analogous to the attempt to obstruct justice by corrupting jurors is to be found in the attempt to prevent the attendance of parties and witnesses at court in order to defeat the rights of private persons in civil cases, and of the state in criminal prosecutions. Thus in criminal prosecutions the attempt has frequently been made either to hush up the star witness for the state or to remove the witness out of the state and beyond the jurisdiction of the court. It is a contempt to attempt to buy off [42] or threaten the prosecuting witness,[43] to decoy [44] or induce a witness to leave the state [45] or otherwise prevent attendance,[46] to accept money to procure the absence of a witness [47] or to accept money in order to leave the jurisdiction.[48] It is likewise a grave contempt to attempt to suppress testimony by the promise of a dress if the witness doesn't tell all [49] or to bribe a witness to give false testimony.[50]

It is also a grave contempt to try to intimidate a grand jury [51] or other witness [52] or to attempt to force a witness to change his testimony

---

[35] Marvin v. District Court of Polk County, 102 N.W. 119 (Iowa).
[36] State v. Broxson, 111 S. 611 (La.).
[37] Baumgartner v. Joughin, 141 S. 185 (Fla.).
[38] Baker v. State, 9 S.E. 743 (Ga.); Drady v. District Court of Polk County, 102 N.W. 115 (Iowa); Cuddy, Petitioner, 131 U.S. 280.
[39] Richardson v. State, 158 S.E. 369 (Ga.App.).
[40] Coleman v. State, 113 S.W. 1045 (Tenn.).
[41] In re Savin, 131 U.S. 267, 1 year (pardoned by the President); Cuddy, Petitioner, 131 U.S. 280, 6 months; In re Kelly, 243 F. 696, $500, affirmed in Kelly v. United States, 250 F. 947; McCaully v. United States, 25 App. D.C. 404, 6 months; Pierce v. United States, 37 App. D.C. 582, 3 months; Baumgartner v. Joughin, 141 S. 185 (Fla.), 60 days; In re Odum, 45 S.E. 569 (N.C.), 30 days; Ex parte Jarvis, 207 P. 494 (Cal. App.), $200 or 100 days; State ex rel. Webb v. District Court, 95 P. 593 (Mont.), $200 and 5 days.
[42] State v. Moore, 61 S.E. 463 (N.C.); Powell v. State, 108 S.E. 464 (Ga.).
[43] McCarthy v. State, 15 S.W. 736 (Tenn.).
[44] Scott v. State, 71 S.W. 824 (Tenn.).
[45] State v. Brownell, 154 P. 428 (Ore.); State v. Jones, 226 P. 433 (Ore.).
[46] Commonwealth v. Freeley, 2 Va.Cas. 1; In re Whetstone, 36 P. 633 (Utah).
[47] Keeney v. United States, 17 F. (2d) 976.
[48] In re Brule, 71 F. 943.
[49] Taylor v. State, 199 N.W. 509 (Neb.).
[50] Fisher v. McDaniel, 64 P. 1056 (Wyo.).
[51] Burge v. State, 145 S.E. 463 (Ga.App.).
[52] Prine et al. v. State, 108 S. 716 (Miss.); by assault, State v. Little, 94 S.E. 680 (N.C.), and Morgan v. State, 105 S.E. 149 (Ga.App.).

by threats of prosecution for perjury.[53] Likewise it is a grievous contempt to keep a party from court because of threats [54] or to scare the defendant in a criminal prosecution into jumping his bail and leaving the state.[55] These acts have generally called for the severest penalties.[56]

Miscellaneous Acts

Other criminal acts which should be mentioned as punishable as contempts are conspiracies to defraud, as where money is solicited for use to fix a prosecution but is not meant to be so used,[57] attempts to induce a court officer to draw certain persons for jury service,[58] assaults upon jurors because of their verdict,[59] jury shadowing,[60] rescue [61] and intimidation of counsel.[61*]

Struggle to Limit the Power over Crimes

The punishment of these criminal offenses as contempts rather than by the ordinary method of the criminal law has never been fully acquiesced in and these acts have seldom if ever been expressly included within statutes defining or limiting the contempt jurisdiction. Nevertheless the courts have succeeded in defending their summary power over these acts by either disregarding the statutes as unconstitutional and void or by so construing the legislation as to bring this power within the statutory jurisdiction.[62] One of the prime factors in the almost complete nullification of these statutory limits has been the desire of the courts to punish the bribery, intimidation and influencing of jurors and witnesses.

Among the cases illustrative of the prominent position of this class of contempts in this fight against statutory limitation are Turk and Wallen v. State,[63] Carter v. Commonwealth,[64] Langdon v. Justices of Wayne Circuit Court,[65] Little v. State,[66] In re Savin,[67] Cuddy, Petitioner,[68] In re Brule,[69] United States v. Carroll,[70] and McCaully v. United States.[71]

---

[53] State v. Kayser, 181 P. 278 (N.M.).
[54] Turk and Wallen v. State, 185 S.W. 472 (Ark.).
[55] Conley et al. v. United States, 59 F. (2d) 929.
[56] Turk and Wallen, supra, $500 and 90 days, and $250 and 45 days respectively (upheld, although in excess of statutory maximum); Fisher v. McDaniel, supra, $500 and 6 months; Burge v. State, supra, $200 and 20 days; Conley et al v. United States, supra, 2 years (also conspiracy to obtain money to fix the prosecution); State v. Jones, supra, $100; State v. Moore, supra, 30 days; Taylor v. State, supra, 30 days; State v. Kayser, supra, imprisoned but term not stated; In re Brule, supra, 3 months; In re Whetstone, supra, 90 days.
[57] Little v. State, 90 Ind. 338; Conley et al v. United States, supra.
[58] Sinnott v. State, 79 Tenn. (11 Lea) 281.
[59] In re Fountain, 108 S.E. 342 (N.C.); Tanner v. United States, 62 F. (2d) 601.
[60] Sinclair v. United States, 279 U.S. 749.
[61] State v. Ackerson, 25 N.J.L. 209.
[61*] In re Bowers, 104 A. 196 (N.J.Eq.).
[62] See Chapters VI and VII.
[63] 185 S.W. 472 (Ark.), disregard of statutory maximum punishment.
[64] 32 S.E. 780 (Va.), holding limitary statute unconstitutional.
[65] 43 N.W. 310 (Mich.), holding limitary statute of no effect.
[66] 90 Ind. 338, holding limitary statute of no effect.
[67] 131 U.S. 267, stretching construction of Federal statute.
[68] 131 U.S. 280, stretching construction of Federal statute.
[69] 71 F. 943, stretching construction of Federal statute.
[70] 147 F. 947, stretching construction of Federal statute.
[71] 25 App. D.C. 404, stretching construction of Federal statute.

CHAPTER IV

Contempt by Publication

The inclusion within the summary contempt jurisdiction of the power to punish contemptuous acts committed out of court has, on the whole, met with severe criticism and popular disapproval both in England and in this country. This feeling of hostility has been particularly marked with reference to the exercise of the contempt power by the judiciary in order to punish the authors of contemptuous publications. Indeed no other segment of the summary jurisdiction has been assailed so vigorously and for such a long period of time.

Kinds of Publications

A careful consideration of the controversy which has arisen as to the authority of the judiciary to punish the authors of contemptuous publications demonstrates an absolutism on both sides which has failed to recognize that there are different types of contemptuous publications and that the authority of the court might well exist in some instances, while being withheld in other cases.

According to the authority of Chancellor Hardwicke in the case of Roach v. Garvan:[1]

> There are three different sorts of contempts. One kind of contempt is, scandalizing the court itself. There may likewise be a contempt of this court, in abusing parties who are concerned in causes here. There may be also a contempt of this court, in prejudicing mankind against persons before the case is heard.

The learned Chancellor recognized that such acts were summarily punishable because:[2]

> There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.

Blackstone in his enumeration of contemptuous acts mentioned contempts "by speaking or writing contemptuously of the court or judges, acting in their judicial capacity, by printing false accounts (or even true ones without proper permission) of causes then depending in judgment."[3]

In more recent times three types of contempt by publication have generally been recognized, first, the publication of court proceedings, second, publications scandalizing the court, and third, publications respecting pending causes.[4] The modern classification of contemptuous publications would seem to be the result of a merger of the ideas of Chancellor Hardwicke and of Blackstone—a merger of the viewpoints of both equity and the common law.

---

[1] 2 Atkyns 471. This case is often cited as the St. James Evening Post case, and sometimes as In re Read and Huggonson.

[2] Ibid, 473.

[3] Commentaries, vol. 4, p. 285.

[4] There is also another species of publication not here considered, because a direct contempt; that is, the filing of contemptuous matter in briefs or pleadings. See 13 Corpus Juris, Contempt, sec. 42.

The first type of contemptuous publications is of but little present day importance. It embraces publication of false, inaccurate or garbled accounts of judicial proceedings or the publication of judicial proceedings without authorization or in defiance of a court order against their publication.[5] Summary punishment for publishing court proceedings without authorization has, with the growth of newspapers and of a reading public, become merely an interesting bit of Blackstonian legal history, for a search of the reports and digests fails to show a single instance of the punishment of such a contempt in the United States. There are also but few cases in which the publication of false or inaccurate accounts of judicial proceedings has been punished, although the power has been recognized in many of the state enumeratory statutes.[6] Punishment for publishing court proceedings in violation of a court order of secrecy [6*] might better be treated like the violation of any other court order, so as to avoid beclouding the issue by appeals to vague symbols such as freedom of the press. Courts certainly should possess the power within the exercise of sound discretion to order that salacious, scandalous or indecent matter be not broadcast through the pages of sensational papers.

Publications which are contemptuous because they scandalize generally consist of charges that the administration of justice has been corrupted, that the court has been prejudiced, that it has been bribed, or has played politics in its decision, or, in short, has been influenced in its decision by anything other than the law and the evidence.[7] All such charges are of a defamatory character, punishable by prosecution for libel and by civil proceedings for damages. In this class also are publications reflecting upon the members of the grand jury.[8]

Contemptuous publications with respect to pending cases [9] embrace such acts as the publications of libels respecting parties to a pending suit or their witnesses or attorneys, publication of prejudicial matter which could not be introduced in evidence, attempting to influence the decision by threats or intimidation, publications advising disobedience of court orders, or taking a violent partisan stand upon any question before the court.[10] In this class of contemptuous publications the acts complained of are of an obstructive character, since they either attempt to influence the outcome of pending litigation or have such a tendency.

Unfortunately, the law of contempt by publication has failed to recognize that there is a clear-cut distinction between publications which are obstructive and those which are merely defamatory. Thus Rapalje, the author of the only American text book upon contempt of court, failed to differentiate between these two types of contemptuous publications, and considered both under the heading "Publications reflecting on the court or its proceedings." [11] This same failure is evident in the division

---

[5] Tate v. State ex rel. Raine, 177 S.W. 69 (Tenn.).

[6] See Cahill's Compiled Statutes of New York, art. 31, sec. 750, subsec. 6, which has been copied in many of the states.

[6*] See Ex parte Sturm et al., 152 Md. 115, growing out of the publication of photographs in disobedience of a court order in the Whittemore murder trial.

[7] McDougall v. Sheridan, 128 P. 954 (Ida.).

[8] People v. Wilson, 64 Ill. 195.

[9] Cases are pending until after a rehearing has been denied in the appellate court, 13 Corpus Juris, p. 37.

[10] 13 Corpus Juris, Contempt, sec. 24.

[11] Rapalje on Contempt, sec. 49.

of judicial opinion in the United States as to the power of a court to punish scandalous publications when they do not concern pending cases.[12] It would seem that it is just as scandalous to aver that the court was bought by the corporations before the rendition of a decision as afterwards. In both cases the damage is the same, arousing distrust and suspicion as to the integrity of the judiciary.

The failure to recognize the basic difference between obstructive and defamatory publications and to grant the courts power to punish obstructive publications, as analogous to the power to punish other obstructive acts, while denying the power with reference to defamatory publications has resulted in a general effort to free both types of publications from the contempt jurisdiction.

The Fight for Freedom of the Press

One of the constitutional guarantees of the citizen is the right to speak or write whatever he pleases provided that he shall be liable for abuse of the right, and constitutional guarantees of free speech and free press are to be found in the basic laws of all the American governments, both state[13] and Federal.[14] With but few exceptions,[15] the courts have always taken the view that the power to punish contemptuous publications is an exception to these constitutional guarantees.[16] Although these constitutional provisions are at times specifically directed against legislative abridgment only, as in the Federal Constitution, judicial impairment of the right has generally been viewed as a violation of at least the spirit if not the letter of the Constitution.

The clash between the judiciary and the citizen as to the punishment of contemptuous publications is primarily a clash of ideals, the citizen being impelled by his psychological reactions to the term "freedom of the press" and by his realization of the centuries-old struggle against despotism for this valued right, while the jurist's only consideration is the sacredness of the judiciary, and the principle that private rights are subordinate to the public welfare.

The Oswald Case—

The earliest instance in which the punishment of a contemptuous publication aroused much public criticism was the contempt proceedings against Eleazor Oswald[17] by Chief Justice Thomas McKean of the State of Pennsylvania, in the year 1788. The contemptuous publication consisted of a libel upon the plaintiff in a suit pending against Oswald, in order to gain sympathy for himself and to prejudice the cause of the plaintiff. Oswald, editor of a Philadelphia paper, had libeled Andrew Brown, the head of a female academy in that city, and had, as a consequence, been sued for libel. While the case was pending Oswald published an article in which he insinuated that he might not receive justice from the court because a brother of the plaintiff's patron, Dr. Rush, was on the bench, that "vile measures had been taken to lay him by

---

[12] 6 Ruling Case Law, Contempt, sec. 25.
[13] 12 Corpus Juris, Constitutional Law, sec. 467.
[14] United States Constitution, Amendments, art. 1.
[15] Ex parte Hickey, 4 Smedes & M. (Miss.) 783.
[16] 13 Corpus Juris, Contempt, sec. 44, note 90.
[17] Respublica v. Oswald, 1 Dallas 319.

the heels'' and that he must put his trust in a jury, which ''would not allow the freedom of the press to be violated upon any refined pretense which oppressive ingenuity or courtly study can invent.''

For publishing this article Oswald was charged with contempt and was found guilty and fined the sum of 10 pounds sterling and was imprisoned for one month. In order to make the proceeding as impersonal as possible, the contempt charged against Oswald was for libeling a party to a pending case, although his statements would also have supported a charge of scandalizing the court.

Oswald then took his grievance before the Legislature of Pennsylvania and endeavored to have McKean and his associates impeached. Although McKean was a signer of the Declaration of Independence, and had acted without personal animosity, merely following the English authorities upon the question, so strong was public feeling against him that twenty-three of the fifty-seven votes cast in the lower house favored his impeachment upon Oswald's charges.[18]

The Passmore Case—

A similar case arose in 1804 as a result of contempt charges against one Passmore, who was tried and punished by McKean's successor in office, Chief Justice Shippen, and Associate Justices Yeates and Smith.[19] Passmore was the plaintiff in a pending case, which was continued on the motion of the defendants. Passmore published a statement to the effect that the defendants had sworn falsely to an affidavit, and were attempting to beat him out of his money. For publishing this statement highly prejudicial to the defendants, Passmore was fined the sum of fifty dollars and imprisoned for thirty days.

Passmore likewise took his case to the Legislature of Pennsylvania and induced the House of Representatives to prefer charges of impeachment against the Chief Justice and his associates on March 23, 1804. The charges were tried before the Senate of Pennsylvania in January of 1805 and resulted in the acquittal of the justices on January 26th. The vote of the Senate was ''guilty'' by thirteen to eleven, but the impeachment proceedings failed because the constitution of the state required a verdict by a majority of two-thirds of the members present.[20]

As a result of these two instances [21] and by three contempt cases involving publications in the Federal Court [22] in Pennsylvania in the year 1801, several attempts were made to induce the legislature to curtail or abolish the power of the judiciary to punish contemptuous publications in summary fashion. These attempts failed, however, because of the opposition of the governor, the same McKean who had figured in

---

[18] See Thomas, p. 115 et seq.

[19] Respublica v. Passmore, 3 Yeates (Pa.) 441.

[20] The proceedings of the impeachment court were published in 1805 by Hamilton, The Trial and Acquittal of Shippen, C.J., and Yeates and Smith, J.J.

[21] Another motive for the impeachment is suggested by the statement of William S. Carpenter, Judicial Tenure in the United States, at page 112: It was apparent to all, however, that the impeachment was a malicious partisan attack upon the Federalist members of the court, and the entire bar of the State refused to assist in the prosecution.

[22] Hollingsworth v. Duane, Federal Cases 6,616; United States v. Duane, Federal Cases 14,997; and United States v. Wayne, Federal Cases 16,654. All of these cases arose from the publication of an attack upon a party to a pending case.

the Oswald case. After the retirement of McKean and the election of Governor Snyder, an act was passed by the legislature in 1809 which enumerated the acts thereafter to be punishable as contempt and provided that publications were excepted, although the party damaged thereby could sue for damages, or have the libeller indicted.[23]

The Bentley and Green Case—

In 1811 a somewhat similar case arose in the State of Maryland when Judge Nicholson of the Baltimore County Court punished John Bentley and Isaiah Green for publishing false copies of the orders of another judge of that court. Although the authority of Judge Nicholson could be upheld upon the ground that the contemnors were both officers of the court and subject to disciplinary action by the court, the cases aroused public interest because of the connection of Luther Martin, one of the ablest American lawyers, with the case as attorney for the defense. Martin was suspended from practice because of his conduct as counsel for the contemnors, and he made an effort to vindicate himself by publishing an account of the proceedings, in which he pointed out the invasion of the sacred right of trial by jury.[24]

The Alien and Sedition Acts—

Attention should also be drawn to the struggle provoked by the passage and attempted enforcement of the Alien and Sedition Acts, for this encroachment upon the constitutional guarantees of free speech and free press parallels somewhat the similar question of punishment of publications as contempt. These acts were passed in 1798 during the presidency of John Adams because of the bitter factionalism displayed by the political newspapers of the time and because of the political activities of Citizen Genet, the representative of the new French Republic, in gross abuse of his diplomatic right of immunity. The Alien Act gave the President power to deport aliens dangerous to the peace and safety of the United States or who were suspected of participation in any treasonable machinations against the government.

The second and more famous of these acts was passed July 14, 1798, and was to continue in force only until March 3, 1801. It provided that thereafter it should be a criminal offense, punishable by fine of $2,000.00 and two years imprisonment to publish any false, scandalous or malicious writing against the government of the United States or either House of Congress, or the President of the United States, in order to defame, or bring into contempt or disrepute, to stir up sedition or incite unlawful combinations to resist any law of the United States or act of the President in pursuance of such a law. Probably no other law was ever more unpopular. The feeling engendered by prosecutions under the act was so intense as to permanently injure the Federalist party.[25]

The Yates Case—

In 1809 a contempt case arose in New York which, although not dealing with publications because of the publicity given the contempt power,

---

[23] Pennsylvania Acts 1808-09, ch. 78, p. 146.

[24] Walter Dorsey and Luther Martin, An Inroad Upon the Sacred Trial by Jury, or, The Case of John Bentley, Gaoler of Baltimore County Gaol, and Isaiah Green, Turnkey of Said Gaol, Baltimore, 1811.

[25] A very good account of these acts and the prosecutions thereunder is to be found in Thomas, Appendices C, D, E, F, and G.

had some influence in later cases involving the power. This was the celebrated Yates case, which was fought through all the courts of the State of New York. Yates, a Master of Chancery, had been punished for contempt by Chancellor Lansing for practicing law, an act forbidden all court officials. Yates applied to Justice Ambrose Spencer of the Supreme Court for his release on a writ of habeas corpus, and the writ was granted and Yates released. Chancellor Lansing immediately issued an order for his recommitment to serve out the remainder of the sentence. Judge Spencer again issued a writ of habeas corpus for his release. The matter was then taken to the Supreme Court, and the writ was dismissed by a vote of three to two, Spencer and Yates holding the writ valid, while the Chief Justice, Kent, and Associate Justices Van Ness and Thompson held the writ invalid.[26] Yates then took an appeal to the highest court of the state, the Court for the Trial of Impeachments and the Correction of Errors, which consisted of the Chancellor, the justices of the Supreme Court, and the members of the Senate of New York. This court was so influenced by the oratory of Justice Spencer and DeWitt Clinton that they reversed the decision of the Supreme Court and ordered the release of Yates.[27] As a result of this case the Legislalature of New York passed in 1829 an act curtailing the powers of the courts of that state with respect to the punishment of contempts.[28]

General Jackson's Fine

The contempt proceedings against General Andrew Jackson (afterwards President) by Judge Hall received wide publicity for political reasons and because Jackson's name was before all the country as the hero of New Orleans. The case was the outcome of a struggle between civil and military authority in the city of New Orleans, a struggle in which the primary cause was the pig-headedness displayed by the General. Jackson's action in obstinately refusing to return the city of New Orleans to the civil authorities after the battle of New Orleans caused much public dissatisfaction, and a Frenchman named Louaillier had the temerity to criticize Jackson in a newspaper article. For daring to criticize "King Andrew" he was arrested upon Jackson's order and imprisoned on a charge of citing to rebellion. Louaillier's counsel at once appealed to Judge Hall, Judge of the Federal District Court of Louisiana, for a writ of habeas corpus directing that Louaillier be brought before him in order to determine the validity of his imprisonment.

Jackson not only failed to heed the writ of habeas corpus or to return the writ, but ordered that Judge Hall be arrested and imprisoned on the same charge, inciting to rebellion, and proceeded to try Louaillier before a military tribunal. The United States District Attorney sued out a writ of habeas corpus for Judge Hall's release from a state judge, and both he and the state judge were also arrested, but were shortly afterwards freed. After five days imprisonment Jackson ordered that Judge Hall be taken four miles beyond the lines by a corporal's guard, and he was freed with orders not to return so long as the city remained

[26] Case of J. V. N. Yates, 4 Johnson (N.Y.) 316.
[27] Case of J. V. N. Yates, 16 Johnson (N.Y.) 337-522.
[28] New York Revised Statutes of 1829, pt. 3, ch. 3, tit. 2, art. 1, sec. 10.

under military rule. Louaillier was tried and acquitted by the military court, much to the disgust of General Jackson, who, nevertheless, proceeded to keep the Frenchman imprisoned until he received official notification of the signing of the Treaty of Ghent.

On March 22nd, 1814, Jackson was ordered to show cause why he should not be punished for his contempt of the Federal District Court of Louisiana for disobeying a writ of habeas corpus, for failing to make a return of the writ, and for having defied the authority of the court by imprisoning a judge of the court. The trial was presided over by the same judge whom he had imprisoned, and Jackson was defended by Edward Livingston, a legal scholar noted for his radical views on the subject of contempt.[29] As a result of the contempt proceedings Jackson was found guilty and find the sum of one thousand dollars.[30]

Judge Hall was universally condemned, for Jackson was the lion of the hour, and the real merits of the matter were lost in the adulation which everywhere greeted the conquering hero.[30*] The reberverations of the contempt prosecution continued for over a quarter of a century, because of the efforts of various politicians to secure Jackson's support by sponsoring bills in Congress to refund the amount of the contempt fine with interest.

The fight to refund the fine was lead by Senator Linn of Missouri in the Senate, and by C. J. Ingersoll of Pennsylvania in the House of Representatives, and it came to a successful conclusion in 1844.[31] In 1843 C. J. Ingersoll published a pamphlet on the subject [32] which no doubt gave a good deal of publicity to the affair then twenty-nine years old.

The Peck Case and its Results

Probably the greatest abuse of the contempt power occurred in 1826, in a case involving the punishment of a contemptuous publication. This was the celebrated contempt case involving Judge Peck of the Federal District Court of Missouri and Luke Lawless, an attorney,[33] which culminated in the impeachment of the judge by the House of Representatives and his trial and acquittal by the Senate.[34] The contempt consisted of the publication of an article commenting upon and criticiz-

---

[29] See Contempt Provisions of Livingston's System of Penal Law for the United States of America, Washington, 1828, ch. 10.

[30] The contempt proceedings were never published; the facts were gleaned from James Parton, Life of Andrew Jackson, vol. 3, pp. 309-320, and Wm. Summer, Andrew Jackson, pp. 52-58.

[30*] It is interesting to note that Jackson learned nothing from this experience as to the supremacy of the civil over the military authority, for in 1821 he had a similar experience as Governor of Florida. Jackson imprisoned Callava, former Spanish governor, for failure to turn over certain papers, and threatened to give him as cellmate Territorial Judge Fromentin when the latter issued a writ of habeas corpus for Callava's release. As a result of complications following Jackson's action he was forced to resign as Governor of Florida.—Henry Minor, The Story of the Democratic Party, p. 110.

[31] Parton, vol. 3, pp. 640-641.

[32] General Jackson's Fine, Washington, 1843.

[33] Accounts of the case may be found in Nelles & King, Contempt by Publication, 28 Columbia Law Review 421 et. seq. Frankfurter & Landis, Power of Congress over Procedure in Inferior Federal Courts, 37 Harvard Law Review 1040.

[34] The impeachment proceedings are set forth fully in A. J. Stansbury, Report of the Trial of Judge Peck, Boston, 1833.

ing the opinion which the judge had rendered in a very important case, the Heirs of Antoine Soulard. This case involved the validity of a Spanish grant of an enormous tract of land in Upper Louisiana, within the boundaries of the State of Missouri. There were hundreds of similar cases involving the validity of claims based upon French and Spanish territorial grants in the Louisiana Territory,[35] most of which would be decided in the same manner as this test case involving Soulard's claim. Lawless had appeared as counsel for the claimants in the Soulard case, and represented quite a large number of the other claimants.

Many of these land claims were false and fraudulent, and it appears that the judge was probably prejudiced against the land claimants. He decided the case against the claimants and in favor of the United States government, adopting a very narrow view of the Spanish law with reference to the granting of lands in the colonies. Because of the importance of the case the Judge's opinion was printed in a local newspaper. Shortly afterwards there appeared an article in a rival paper signed "A Citizen," which criticized the judge's opinion and respectfully pointed out a number of errors of fact and law into which the judge had fallen.[36] Judge Peck at once had the printer attached for contempt, and when it appeared that the writer of the article was Lawless, he was ordered to show cause why he should not be punished for writing the article. The proceeding was a travesty on justice, as the case was conspicuous for the bias, rudeness, and anger shown by the judge. Lawless was ordered imprisoned in the common jail of St. Louis for twenty-four hours, and was suspended from practice for eighteen months.

Lawless did not exercise his limited rights of appeal, but sought vindication or revenge by the political road. December 8, 1826, Mr. Scott of Missouri introduced Lawless's memorial in the House of Representatives, setting forth that Judge Peck had acted illegally and in a manner cruel, vindictive and unjust. The memorial was referred to the House Committee on the Judiciary, but it was effectively pigeonholed because of the opposition of Daniel Webster. Three years later, December 15, 1829, the memorial was introduced in the House by McDuffie of South Carolina, and was again referred to committee. The membership of this body now differed somewhat, Webster having gone to the Senate, and James Buchanan being chairman, and it was more sympathetic. After consideration of the memorial and after having investigated the compliant, the committee reported on March 23, 1830, "that in consequence of the evidence collected by them, they are of the opinion that James H. Peck, Federal Judge of the District of Missouri, be impeached of high misdemeanors in office."

Upon this motion animated debate ensued, with Buchanan, Spencer, Ellsworth and Wickliffe favoring impeachment; while Clay, Huntington and Pettis were against impeachment; and Everett and Burgess favored a vote of censure without impeachment. The report of the Judiciary Committee was approved, and Judge Peck impeached, by a vote of 123 to 49, and Buchanan, Storrs, Spencer and McDuffie were designated

[35] See A. M. Sokolski, The Great American Land Bubble, New York, 1932.
[36] It is interesting to note that Judge Peck's reasoning was reversed by the Supreme Court which vindicated the opinion of Lawless in the case of Heirs of Soulard v. United States, 4 Peters (U.S.) 511.

to draw up articles of impeachment and present the same to the Senate. The articles of impeachment charged that "Judge Peck, with intention wrongfully and unjustly to oppress, imprison and otherwise injure Luke Lawless, under color of law, did . . . order and adjudge, that the said Lawless should be committed to prison for twenty-four hours for contempt and that he should be suspended from practicing as an attorney in the said court . . . and immediately committed the said Luke Lawless to the common prison in the said city of St. Louis, to the great disparagement of public justice, the abuse of judicial authority, and the subversion of the liberties of the people of the United States." [37]

The impeachment proceedings began March 4th and consumed the better part of a year, finally ending in an acquittal on the last day of January of the following year. The defense was conducted by William Meredith and William Wirt, and the case contained the most exhaustive discussion of contempts, and in particular of contempts by publication, which can be found. The Senate acquitted the judge by a vote of 21 guilty, 22 not guilty, and it appears that the vote was influenced by sympathy for the age and infirmities of the judge,[38] by party and intra-party considerations, and by the hostility between President Jackson and House Manager Buchanan.[39]

As the result of the disclosures of the Peck impeachment, Congress decided after his acquittal to remedy the situation by passing a bill intended to curtail somewhat the summary jurisdiction of the Federal Courts.[40]

The Federal law was copied by the Legislatures of seven states,[41] Alabama, Georgia, Maryland, North Carolina, Ohio, Tennessee, and Virginia. It was also adopted by the state of New Mexico [42] by a provision that the courts of that state should accept the rules in force in the United States courts with reference to contempts.

The Federal law has, however, had but little effect, for the courts have been able to punish publications because of their obstructive effect.[43]

Notable Contempt Cases of Recent Years

In the Federal courts there have been a number of important cases involving the punishment of publications as contempt. All of these cases have involved publications allegedly obstructive, that is, not actually obstructive, but obstructive in tendency. The first of these cases was the trial of contempt charges by Judge Killits against the Toledo Newspaper Company and others.[44]

---

[37] The full text of the impeachment articles is set forth in Stansbury, 49-51.
[38] Thomas, p. 70; Frankfurter and Landis, 37 Harvard Law Review 1040; Nelles & King, 28 Columbia Law Review 525.
[39] Memoirs of John Quincy Adams, vol. 8, p. 306: It is highly probable that Jackson did not wish to see an impeachment of a Judge, commenced by Buchanan, successfully carried through . . . Jackson's aversion to Buchanan is immediately personal and vindictive.
[40] See Chapter VII.
[41] See Nelles & King, 28 Columbia Law Review 533, note 30.
[42] New Mexico, Statutes Annotated, art. 34, sec. 105.
[43] See Chapter VII.
[44] 220 F. 458, United States v. Toledo Newspaper Company et al.

The Toledo Newspaper Case—

The Toledo Newspaper case arose in 1915 in the Federal District Court for the Northern District of Ohio, and was the outgrowth of newspaper support of the city of Toledo in a controversy with the local street car company. The facts of the case were as follows:[45] The Toledo Railways and Light Company operated a number of street car routes in Toledo under different franchises; a number of these franchises were to expire March 27, 1914, and the city refused to renew them except upon conditions under which the company could not operate profitably; several months before the expiration of these franchises the traction company had been made defendant in an action in the Federal court for the appointment of a receiver; three days before the expiration of the franchises the traction company applied for an injunction to restrain officials of the city of Toledo from enforcing a city ordinance which provided that a continuation of car service would make the company liable for a daily tax of $250.00 for the use of the streets and would require a three-cent fare; this application for an injunction was dismissed because it appeared that no action had yet been taken by the city officials; about four months later a supplementary bill was filed alleging that because of the action of city officials the company was forced to carry thousands of free passengers (as they refused to accept a three-cent fare); the case was set for hearing, the city was ordered to adduce its testimony, and at the hearing the city solicitor admitted that the city's terms were unreasonable and confiscatory; the judge then took the case under advisement for several days to consider procedural objections raised by the city.

Three contempt cases grew out of this litigation, the first was against the business agent of the Central Labor Union, one Quinlavan, for having denounced the Court for allegedly placing the burden of proof upon the city, and for advocating that the labor union take steps towards the impeachment of Judge Killits. The second was against Holmes, the editor of the Toledo "News-Bee," for a number of editorials and cartoons attacking the court with reference to its actions in the main litigation and in the Quinlavan contempt case. The third case was against the Toledo "News-Bee" for the same offense and for commenting upon the contempt proceedings against the editor.

The specific publications which were the basis of the charges were a cartoon representing the traction company as in the Last Ditch, meaning the Federal court, and criticizing the transaction of legal business between the local clerk of the court and Judge Killits in Cleveland by telephone; a cartoon labeled "A Desperate Case," showing the traction company as a sick man in bed, with the attorneys and creditors gathered round, and one saying "We'd better call in Doc Killits"; an editorial advocating refusal to pay more than a three-cent fare, restraining order or no restraining order, commenting upon the refusal of a city officer to comply with any order issued, and commenting upon a protest meeting of laborites and saying that these men might furnish the sinew to see to it that three-cent fares be accepted by conductors; an editorial quite derogatory of the creditors of the company, stating that the people of Toledo would be forced to pump the water out of the securities of the

[45] The facts are taken from the minute review set forth in the decision.

car company; a statement to the effect that Killits had upset the low fare ordinance, whereas in fact he had merely released a statement as to the rights of the parties and had said that the ordinance ought not to go into effect until its validity had been questioned; a statement that "the people will have a sort of referendum vote as to whether they will pay three or five cents for street car rides"; a notice that "the police will not injure those who refuse to pay more than three cents after March 27th, because as a former mayor had said, the law is only what the people will back up"; the expression of "the hope that substantial and not technical justice would be done"; a cartoon showing the United States Marshal rushing to Toledo with a restraining order which was in fact never granted; an editorial charging that "the people of Toledo would be told by the Federal court on what terms the Big Con (the traction company) can use the streets of the city"; the false statement that a number of United States deputy marshals were being rushed from Cleveland to Toledo to carry out the orders of the court; giving a prominent place in the paper to the doings of the local Socialists and to their resolution that "the courts were without power to unmake laws made by a legislative body"; publication of a false report that the low fare order had been upset by the court; and the prominent place given to the criticism of the judge by the Central Labor Union meeting. In addition there were several charges which were merely of an uncomplimentary type, such as, "Because he is a judge, and a Federal Judge at that, doesn't make him any more or less of a man than he was before he went on the bench"; that the rights of the people would be placed in the hands of a two-legged human being who happens to be a Federal Judge"; and "that the rights of the people will depend largely upon how his mind works, and whether he thinks in straight lines or around corners."

The contemptuous publications in connection with the Quinlavan contempt case were a prominent heading "Killits will try the Quinlavan contempt case himself"; publication of a letter, actually written in the office of the editor, strongly criticizing the action of the judge in trying his own case, and which ended with the statement that "such tactics on the part of the judiciary will not have a tendency to instill in us more confidence"; and the publication of an editorial headed "Would it be a contempt to remark that it is a peculiar situation where the officer who makes the charge, also considers the evidence, renders the verdict, and imposes the sentence."

After the editor of the paper, one Holmes, had been attached for the editorial as to the Quinlavan contempt case, the paper published an editorial entitled "The News-Bee and Judge Killits," which said that the contempt proceedings against the editor "would not change the policy of the newspaper, which would print what it pleased, whether it pleased or displeased this, that or any other citizen—even though that citizen happens to be what is commonly known as a judge," that "we have no intention of permitting any judge of any court to influence our judgment in defending the public interest, that "we will not permit judicial censorship of the News-Bee's editorial policy," that "we prefer to give every judge a free reign to make either a Solomon or a monkey of himself," that "once a case is decided we shall say and publish whatever we think best for the public good, whether it pleases or displeases

any judge—even if that judge happens to be John M. Killits,'' and that the judge was only a two-legged human being, was neither infallible nor divine, and that the mere elevation to a judgeship made no change in the man himself. These contempt charges were further aggravated by the fact that the editorial was carried in four editions of the paper the day after the citation for contempt was issued.

It was a foregone conclusion that the defendants, the paper, the editor and other officers, would be found guilty, and the judge imposed a fine of $7,500 upon the paper and several hundred dollar fines upon the officials. These penalties were upheld by both the Circuit Court of Appeals [46] and the Supreme Court of the United States,[47] with Brandeis and Holmes dissenting.[48]

Looking at the Toledo Newspaper case from a dispassionate view it would seem that the judge only had the authority to punish for the publications attacking the parties to litigation pending and for publications which advocated disobedience of the court order. It is true that several of the publications might be said to have brought pressure to bear upon the judge to decide the case in favor of the people of Toledo, but this was not of such a serious character as to have been obstructive.[49] Unfortunately, in the charges Judge Killits included a number of publications which cannot be viewed as representing anything but attacks upon the judge of a purely personal character which although technically contempts because of their lack of respect, should have been passed over.[50] The publication with respect to the Quinlavan contempt case should not have constituted a contempt, for it merely pointed out the weakness of the contempt jurisdiction, which is quite evident—the fact that the judge unites in his person the roles of prosecutor, judge, jury and executioner.

The Circuit Court of Appeals upheld the contempt conviction upon the publications with respect to the litigation involving the street car company, and did not consider the validity of the charges with respect to the Quinlavan or the Holmes contempt cases. The Circuit Court of Appeals pointed out the delicate position of the judge in a contempt prosecution such as the instant case, and stated that wherever possible a substitute judge should be employed. It should be noted that it was just such a statement, although not so politely framed, which was the basis of the charges growing out of the Quinlaven contempt case.

The Craig Case—

In 1921 another important contempt case arose in the Federal courts. This is the celebrated case in which Craig, Comptroller of the City of New York, was punished by Judge Mayer of the Federal District Court for the Southern District of New York for publishing a letter in which it was claimed that the judge was unfair to the city and refused it access

---

[46] Toledo Newspaper Company et al v. United States, 287 F. 986.
[47] Toledo Newspaper Company, 247 U.S. 421.
[48] Dissenting opinion, 247 U.S. 422-426.
[49] Justice Holmes, 247 U.S. 423. A judge of the United States is expected to be a man of ordinary firmness of character, and I find it impossible to believe that such a judge could have found in anything that was printed even a tendency to prevent his performing his sworn duty.
[50] See opinion of Taft, in Craig v. Hecht, 263 U.S. 255, 279.

to original records of a New York utility company in receivership. The basis of the charges was the refusal of Judge Mayer to appoint a receiver named by the city of New York. Judge Mayer instituted contempt proceedings against Craig, and upon his refusal to retract his statements, Craig was sentenced to imprisonment for six months.[51] The action of the judge in giving Craig a jail sentence instead of a fine seems rather vindictive, since Craig was a high official of the city of New York and had official duties to perform.

Craig did not take an appeal to the Circuit Court of Appeals, but sued out a writ of habeas corpus from Judge Manton of the Federal Circuit Court of Appeals, which was granted upon hearing.[52] Nevertheless Hecht, United States Marshal, refused to release Craig because of the commitment order from Judge Mayer, and Craig brought suit against Hecht in the Circuit Court of Appeals. By a vote of two to one this court upheld the contempt conviction and dismissed the habeas corpus issued by Judge Manton.[53]

Craig then appealed to the Supreme Court[54] which dismissed the appeal upon the grounds that the correct procedure for Craig to have employed was by way of appeal and not by habeas corpus, although Holmes and Brandeis again dissented.[55] Whether the validity of the contempt conviction would have been upheld upon appeal seems rather questionable, for the publication complained of does not seem to have been of a very obstructive character.

This point of view is partly borne out by the concurring opinion of Chief Justice Taft[56] in this case:

> If the publication criticizes the judge or court after the matter with which the criticism has to do has been finally adjudicated and the proceedings are ended so that the carrying out of the court's judgment can not be thereby obstructed, the publication is not contempt and can not be summarily punished by the court however false, malicious or unjust it may be. The remedy of the judge is by action or prosecution for libel. If, however, the publication is intended and calculated to obstruct and embarrass the court in a pending proceeding in the matter of the rendition of an impartial verdict or in the carrying out of its orders and judgment, the court may, and it is its duty to protect the administration of justice by punishment of the offender for contempt. The Federal statute concerning contempts as construed by this court in prior cases vests in the trial judge the jurisdiction to decide whether a publication is obstructive or defamatory only. The delicacy there is in the judge's deciding whether an attack upon his own judicial action is mere criticism or real obstruction, and the possibility that impulse may incline his view to personal vindication, are manifest.[57]

The Sanders Case—

Probably one of the most flagrant abuses of the power to punish contemptuous publications, although within the lawful limits of the power because it affected a pending case, was the recent decision in the Federal District Court for the Western District of Tennessee, in the case of United States v. Sanders.[58] The contempt charges against Sanders were

---

[51] United States v. Craig, 266 F. 230.
[52] Craig v. Hecht, 274 F. 177.
[53] Craig v. Hecht, 282 F. 138.
[54] Craig v. Hecht, 263 U.S. 255.
[55] Dissenting opinion, 263 U.S. 280-282.
[56] Concurring opinion, 263 U.S. 278-280.
[57] 263 U.S. 279.
[58] 290 F. 428.

the outgrowth of comments upon the contempt charges against Jacob Cohen in the same court. Cohen, the editor of a labor paper in the city of Memphis, was charged with having violated an injunction issued in the Illinois Central strike. The violation of the injunction consisted of an article characterizing strike breakers as "dirty scabs and industrial scavengers." Sanders was the editor of The Press, another Memphis paper, and pending the trial of the charges against Cohen he printed an article entitled "The King Forbids," in which the court was portrayed as a feudal king with sole power to dispense justice to the high, the middle and the low. The article stated that the use of the terms set forth above was supposed to be a violation of the injunction; that possibly Cohen had not known that the king had forbidden such things to be said of strike breakers; that it would be lawful to use the said terms in speaking of any other class or of strike breakers before the fiat of the king was announced; and that it was up to all the king's subjects to be up on all the king's latest laws. This section was concluded:

> No doubt he (Mr. Cohen) is one of those old-fashioned souls who believe there is something real in those words the Constitution contains about free speech and free press. He probably thought that antiquated doctrine would protect him in giving his opinion to the world. Ha! ha! ha! ha! Fetch him before the throne.

The second part of the article was headed "Where's the Stopping Place?" and it contained the following statements:

> If the courts can go that far in muzzling free press, where is the stopping place?... If a court can take away that right by injunction, either the court is out of gear, or the Constitution. We prefer to think it is the court that is out of gear.

The court concluded that this publication constituted a contempt because it attacked the honesty and impartiality of the tribunal, and tended to incite the public mind with respect to the pending contempt proceedings against Cohen.[59] The court upheld its action by pointing out the great extent of the Illinois Central strike, that the United States government had been forced to call upon its courts for assistance, and that the assistance would be rendered ineffective by publications intended to inflame the citizenry against the courts.

To the present writer the court failed to make out a sufficient case of obstructiveness to warrant the punishment of Sanders in summary fashion. The publication would seem to be nothing more than lawful comment upon the character of judicial proceedings as to injunctions and contempts, although it must be admitted that the publication was not very respectful.

The Sullens Case—

In 1929 a very important contempt case arose in the Federal District Court in Mississippi, and the proceedings received much publicity be-

---

[59] It should be noted that although Sanders was punished for his comments upon the Cohen case, Cohen was later freed by the Circuit Court of Appeals for the Sixth Circuit upon the grounds that the Illinois Central injunction had not covered the publications made by Cohen. Cohen v. United States, 295 F. 633.

cause of political implications. This was the case of United States v. Sullens [60] in which it was claimed that a newspaper publication obstructed the administration of justice because it prejudiced the rights of the prosecution. Several indictments were then pending in the court for violation of an act of Congress forbidding the sale of political influence to secure any United States appointive office. One of these cases had been tried, and had resulted in an acquittal. Before the next case was tried the defendant published an article stating that the sole issue in the case was political, that all of the defendants would be acquitted without regard to their guilt or innocence because the jurors would all be white Democrats, and a conviction would help establish a Lily White Republican party in the state. As the court pointed out, it would certainly be a contempt to "buttonhole" a juror and tell him he should decide the case other than on the evidence submitted, and that the same result would be secured by means of publications unless the court could protect its proceedings. The defendant was not punished, as the court suspended sentence during good behavior. Nevertheless the defendant afterwards published the statement that:

> If everybody in Mississippi who expressed opinions to the effect that the Federal government would not succeed in convicting the alleged patronage grafters, were sent to jail for contempt of court, it would cause a complete suspension of business in the Commonwealth. And if everybody who had expressed contempt and derision concerning the hypocritical declaration of the Republican leaders that they intend to make the party decent in Mississippi, should be sent to jail, it would cost about twenty million dollars to build jails enough to hold them.

The charges, however, do not appear to have been reopened or sentence passed upon Sullens.

The Shepherd Case—

The first of the more recent important state cases involving contemptuous publication was the case of State ex inf. Crow v. Shepherd,[61] decided by the Supreme Court of Missouri, in 1903. The case received wide publicity, because the action of the court in setting aside a limitary statute of Missouri was severely criticized by John L. Thomas, a former justice of the court, who published a volume on constructive contempt, proving the incorrectness of the court's position upon a review of the historical evidence.[62]

Shepherd, the editor of the Warrensburg "Standard Herald," severely criticized the Supreme Court of Missouri for its decision in the case of Missouri Pacific Railroad v. Oglesby [63] in favor of the railroad, in dismissing the case without remanding it to the lower court for a new trial.[64] The publication charged that the court was owned by the railroad. This publication first reiterated the corrupt condition of government in Missouri and continued:

> And now, as the capsheaf of all this corruption in high places, the Supreme Court has, at the whipcrack of the Missouri Pacific Railroad, sold its soul to the corporations.

---

[60] 36 F. (2d) 230.
[61] 76 S.W. 79 (Mo.).
[62] Thomas on Constructive Contempt, St. Louis, 1904.
[63] 76 S.W. 623 (Mo.).
[64] The facts are taken from the opinion of the court.

The publication then gave the lengthy history of the case, which extended over more than a decade, and in which the Supreme Court had decided in Oglesby's favor upon four different occasions, and continued:

> The legal department of this great corporation was not the only department which was busy in circumventing the defeat of the Oglesby case. The political department was very, very busy. Each election has seen the hoisting of a railway attorney to the Supreme Bench, and, when that body was to the satisfaction of the Missouri Pacific, the onslaught to kill the Oglesby case began.

It was then stated that the court had reversed the decision and sent the case below for another trial, which again resulted in a $15,000 verdict for the plaintiff, and that

> An election was coming on, and the railroad needed yet another man to beat the Oglesby case. The Democratic nominating convention was kind and furnished him, in the person of Fox.... Monday the decision was handed down, reversed and not remanded for trial. The victory of the railroad has been complete and the corruption of the Supreme Court has been thorough. It has reversed and stultified itself in this case until no sane man can have any other opinion but that the judges who concurred in the opinion dismissing the Oglesby case have been bought in the interest of the railroad. What hope have the ordinary citizens of Missouri for justice and equitable laws in bodies where such open venality is practiced. And how long will they stand it? The corporations have long owned the Legislature, now they own the Supreme Court, and the citizen who applies to either for justice against the corporations gets nothing.... The quivering limb that Rube left beneath the rotten freight car on Independence Hill, and his blood that stained the right of way of the soulless corporation, have been buried beneath the wise legal verbiage of a venal court, and the wheels of the Juggernaut will continue to grind out men's lives, and a crooked court will continue to refuse them and their relatives damages, until the time comes when Missourians, irrespective of politics, rise up in their might and slay at the ballot box the corporation-bought lawmakers of the State.

The Sheridan Case—

Another famous instance of the punishment of contemptuous publications arose in the State of Idaho in 1913 in the case of McDougall, Attorney General, v. Sheridan et al.[65] The case received a wealth of publicity because it climaxed a bitter party fight between regular "Republicans" supporting Taft, and Progressives supporting Theodore Roosevelt. The immediate cause of the publications was the case of State ex rel. Spoffard v. Gifford,[66] in which Spoffard had asked for an injunction restraining the printing of Progressive presidential electors upon the ballot because of the illegality of their selection. Thirty-one exhibits were set forth in the opinion of the court, and they covered attempts to influence the decision of the court in the Spoffard case, attempts to arouse prejudice against the plaintiff, and scandalizing the court for its decision in the Spoffard case, by imputing that it was the result of party considerations. One of the contemptuous publications consisted of a reprint of an open letter written by Theodore Roosevelt which severely criticized the action of the court.[67] The Supreme Court of Idaho found the three defendants guilty and imposed fines of $500 and ten days imprisonment upon each.[68]

---

[65] 128 P. 954.
[66] 126 P. 1060 (Ida.).
[67] 126 P. 1060.
[68] Exhibit 12 set forth in full in 128 P. 954, 958.

The Magee Case—

In 1923 Carl Magee, the crusading editor of the New Mexico State Tribune, was indicted for criminal libel as a result of several publications attacking the corruption of the Fall Ring, which, by its control of Republican party machinery, ran the state of New Mexico as it pleased. While the libel case was pending Magee published in his paper several articles discussing the case and attacking the presiding judge of the Fourth Judicial District. Magee and his paper were punished for these publications, Magee by a sentence of one year in prison, and the paper by a $4,000 fine.[69] The governor of New Mexico saved Magee and his paper by granting an absolute pardon.

The Shumaker Case—

The most recent, as well as the most flagrant instance in which a publication has been punished as contempt of court occurred in Indiana in 1928 in the well-known case of State v. Shumaker et al.[70] Shumaker was a minister and editor of the Anti-Saloon League paper in Indiana, while the others were connected with the paper. He published several articles which labeled the Supreme Court of the State as wet, which charged that as a result of the strict rulings of the court with respect to the admissability of evidence, many bootleggers were set free, and which urged all members of the league to work for the election of judges of dry sympathies. He also quoted a statement by a former president of the League, Colonel Eli Ritter, that when the liquor interests could no longer own the legislature, that they would seek to own the courts. As a result of these publications Shumaker and several of his assistants were charged with contempt for scandalizing the court and misrepresenting the opinion of the court. They were found guilty by a vote of three to two, and in spite of a disclaimer of intent to contemn the court were punished rather severely both by fine and imprisonment. Oddly enough the dissenting opinion was written by a newcomer to the bench, who sat in the case merely at the desire of the other members of the court in order to have his unprejudiced opinion.

The court refused by a similar three to two vote to allow the Governor of Indiana to interfere by pardon,[71] and Shumaker was forced to serve his term in accordance with the sentence.

Looking at the Shumaker case from a dispassionate point of view it seems that the action of the court was highly arbitrary, if not illegal. The charge of misrepresentation was not satisfactorily proved, for it appeared that, from a factual viewpoint, Shumaker was right as to the effect of the decisions claimed to have been misrepresented. It is also highly questionable whether the charges of scandalizing the court were properly made out, for the statements did not clearly and unmistakably charge the court with corruption, but amounted only to a charge that the court was of wet sympathies. It seems also that the majority denied the defendants the right to work for the election of dry judges. Likewise the case contains evidence that the justices of the court displayed an animus towards Shumaker by their refusal to accept his apologies,

---

[69] The facts are from the opinion of the court in State v. Magee Publishing Company et al. 224 P. 1028 (N.M.).

[70] 163 N.E. 272 (Ind.).

[71] State v. Shumaker, 164 N.E. 408 (Ind.).

by the prison sentence in view of the questionable circumstances, and by their interference in order that the victim should not escape them by means of the pardon from the governor—an interference against the weight of judicial opinion.[72]

Allowable Area of the Summary Power

Because of the deep-seated beliefs of the ordinary citizen in freedom of speech and the right of trial by jury, it would seem that no publication out of court should be proceeded against in summary feshion. Yet it is also perfectly evident that such a program would be far too radical for judicial support, without which it seems hardly possible that such a plan could be effective.[73]

A better substitute for such a radical program would seem to be in the differentiation of obstructive and defamatory publications, and denying the courts power to proceed summarily if the contemptuous act be merely derogatory. Likewise there should be a more liberal construction of the term "obstructive" by the judiciary, recognizing that certain acts are obstructive in fact, while others are obstructive only in name. It certainly seems perfectly proper that the court should have power to punish willful attempts to influence the decision in pending cases.

Likewise if the power of the courts be limited to the punishment of obstructive contempts there should be a definition of what is meant by "pending cases," in line with the policy of punishing publications obstructive in fact only.[74]

One realm in which the power of the courts might well be exercised more frequently would be to put an end to the sensational write-ups of oustanding criminal cases and vulgar divorce cases by the sensational newspapers of American cities, who use the cry of "the liberty of the press" to abuse the liberty of the press. In 1910,[75] thus James W. Garner wrote:

> One of the acknowledged evils in the administration of the criminal law in America is the unbridled license of the press in commenting upon and often trying in advance cases in the public prints.

And in more recent years the problem has been often commented on and has caused the coinage of the term "trial by newspaper."[76]

---

[72] See Chapter VIII.
[73] See Chapters VII and VIII.
[74] Mr. Justice Holmes in Craig v. Hecht, 263 U.S. 255, 281.
[75] Trial by Newspaper, Journal of Criminal Law & Criminology, 849.
[76] Alfred Appel, Publications Attempting to Obstruct Justice, 12 Cornell Law Quarterly 374; 11 Journal American Judicature Society 50; Stuart H. Perry, Trial by Newspaper, 66 United States Law Review 374.

CHAPTER V

Injunctions and Contempts

The struggle against the punishment of publications as contempt was the earlier of the two great struggles against the summary jurisdiction. In more recent years, the fight has centered about the threatened or actual exercise of the contempt power in order to enforce compliance with, or punish disobedience of injunctional or restraining orders of courts. Since it has generally been accepted without question that courts must have power to enforce their orders and decrees, the efforts of those favoring change have been directed towards securing procedural rather than substantive reforms. The primary objective has been to secure the right of trial by jury, and the struggle has been with reference to two rather closely related types of restraining orders, injunctions to enforce the criminal law, and injunctions in labor disputes.

The Injunctive Power

It has long been one of the maxims of equity that courts of equity jurisdiction have no authority with reference to criminal questions, and it is true that equity courts do not try criminal cases, as such, in the ordinary manner.[1] But equity courts, because of their peculiar origin [2] and the *in personam* character of their orders and decrees,[3] have long assumed the power to issue orders, upon the application of private parties, restraining the commission of actual or threatened action whereby the petitioner might suffer irreparable damage.[4] Many of the acts restrained were unlawful and also constituted criminal offenses, so that the courts did actually punish criminal offenses, not as such, but as violations of the court's order.

The injunction was formerly of little importance, as such orders affected but few people. In more modern times, however, the use of the injunction has become much more widespread, and has touched the daily lives of a much larger portion of the population than the older type of injunction. The increase in the importance of the injunction has been due to its extensive exercise for two new purposes, namely, to enforce the criminal law and to prevent violence by employees in labor disputes.

Injunctions to Enforce Criminal Law

It has always been true that equity courts had power to enforce the criminal law, that is, in the sense that equity could, upon demand of some person injured thereby, restrain the maintenance of a nuisance, and such a nuisance might be the keeping of a house of prostitution.[5] What the writer here refers to as enforcing the criminal law, is the issuance of restraining orders and the punishment of violations thereof at the behest of the government.

---

[1] Eaton on Equity, p. 24.
[2] George Burton Adams, The Origin of English Equity, 27 Columbia Law Review 87.
[3] Ibid, p. 77.
[4] Eaton on Equity, ch. 22.
[5] Eaton on Equity, 551.

In the Federal sphere of action there are several instances in which the courts will issue injunctions and punish criminal offenses at the behest of the government without according the defendant his constitutional rights, including the right of trial by jury.

Thus in 1890 Congress passed an act giving power to officers of the United States to go into the Federal courts and sue out an order restraining the commission of conspiracies which threatened to obstruct interstate commerce.[6] This act first received wide publicity in 1894 with the filing of such a suit in the Federal District Court for the Northern District of Illinois restraining the unlawful acts of certain strikers and labor leaders.

Out of the violation of this restraining order arose the famous Debs contempt case.[7] The facts of the case were as follows: There had been a labor dispute between the Pullman Palace Car Company and its employees, and many of these had gone on strike and begun a boycott against the company. They endeavored to make this boycott successful by stopping the running of all trains into and out of Chicago which carried any Pullman cars, and they succeeded in stopping a number of trains by force and by fomenting strikes among the employees of the railroads and also interfered with the Union Stock yards, which affected the whole country.[8] In order to remove the obstruction from interstate commerce the Federal District Attorney enjoined the labor group from further unlawful acts. Debs was one of the leaders of the labor groups, representing an association known as the American Railway Union. For disobeying the injunction Debs was adjudged guilty of contempt and was punished by a jail term of three to six months.

The Debs case aroused a storm of protest, not only from labor sympathizers, but from legal scholars,[9] as the enforcement of the criminal law in contravention of the constitutional guarantee of trial by jury. The action of the court in punishing Debs was also criticized in Congress, and a number of bills were introduced in order to prevent a recurrence of a similar situation.[10] So powerful was the pressure of condemnation that a bill introduced by Senator Hill passed the Senate, but failed in the House because of the end of the session.[11]

Probably the most flagrant abuse of the exercise of the injunctive powers of courts of equity to enforce the criminal law without trial by jury was authorized by Congress when it provided that the courts should enjoin the operation of illegal bars, as a method of enforcing the Prohibition Act.[12] This act provided that:

---

[6] 15 U.S.C.A. 4.

[7] In re Debs, 158 U.S. 564.

[8] The facts are taken from the government's bill of complaint seeking to restrain Debs and others from their unlawful interference with the mails and interstate and foreign commerce.

[9] W. D. Lewis, A Protest Against Administering Criminal Law by Injunction, 33 American Law Register (n.s.) 879; Strikes and Courts of Equity, 37 American Law Register (n.s.) 1; C. N. Gregory, Government by Injunction, 11 Harvard Law Review 487; W. H. Dunbar, Government by Injunction, 13 Law Quarterly Review 347.

[10] See note on Page 41.

[11] S. 2984, Senate Report 827, 54th Cong., 1st Sess.; House Report 2401, 54th Cong., 2nd Sess.

[12] U.S.C.A. 34.

Sec. 34. An action to enjoin any nuisance defined in this chapter may be brought in the name of the United States by the Attorney General of the United States or by any United States attorney or any prosecuting attorney of any State or any subdivision thereof or by the commissioner or his deputies or assistants. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue, restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the liquor or fixtures or other places used in connection with the violation of this chapter constituting such nuisance. No bond shall be required in instituting such proceedings; it shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquors shall be manufactured, sold, bartered, or stored in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than $500.00 nor more than $1,000.00, payable to the United States, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, kept, or otherwise disposed of therein or thereon, and that he will pay all fines, costs, and damages that may be assessed for any violation of this chapter upon said property.

Sec. 35. Any person who shall, with intent to effect a sale of liquor by himself, his employee, servant, or agent, for himself or any person, company or corporation, keep or carry around on his person, or in a vehicle, or other conveyance whatever, or leave in a place for another to secure, any liquor, or who shall travel to solicit, or solicit, or take, or accept orders for the sale, shipment, or delivery of liquor in violation of this title is guilty of a nuisance and may be restrained by injunction, temporary and permanent, from doing or continuing to do any of said acts or things.

In such proceedings it shall not be necessary to show any intention on the part of the accused to continue such violations if the action is brought within sixty days following any such violation of the law.

Sec. 38. In the case of the violation of any injunction, temporary or permanent, granted pursuant to the provisions of this chapter, the court, or in vacation a judge thereof, may summarily try and punish the defendant. The proceedings for punishment for contempt shall be commenced by filing with the clerk of the court from which such injunction issued information under oath setting out the alleged facts constituting the violation, whereupon the court or judge shall forthwith cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not less than $500.00 nor more than $1,000.00, or by imprisonment of not less than thirty days nor more than twelve months, or by both fine and imprisonment.

The constitutionality of these provisions, providing that criminal acts might be enjoined and punished without a trial by jury was vigorously attacked by a number of writers,[13] and it seems perfectly evident that these provisions were added in order that the Prohibition laws might

[13] R. N. Golding, Constitutional Questions Involved in the National Prohibition Act, 19 Illinois Law Review 444; J. M. Olmstead, Padlock Injunctions, 11 American Bar Association Journal 389; W. A. Shumaker, Padlock Injunctions, 30 Law Notes 185.

be enforced in certain wet sections of the country without having to depend upon convictions by possible wet juries. It is obvious likewise that punishment for contempt offers a much greater certainty of conviction than does trial upon indictment before a jury, for the simple reason that in the former only one person may decide the question of guilt, while in the latter there must be a unanimous verdict by twelve persons.

Likewise in the several states, many of the legislatures granted to the courts the power to enforce local prohibition laws in the same manner. In the states the use of the injunction to abate the evil of prostitution has been widespread until nearly all of the states have so called Red Light Abatement Acts [14] directed against houses of prostitution. It seems that the Red Light Injunction has been very efficacious in some jurisdictions.[15] By state legislation the use of the injunction to enforce the criminal law has been authorized also with respect to gambling houses, prize fights, lotteries, obscene publications, narcotic nuisances, cigarette nuisances, unlawful dentistry and veterinary practice, and violations of pure food and blue sky laws.[16]

The Labor Injunction

A subject very closely related to the use of the injunction and the contempt power to enforce the criminal law is the exercise of the injunctive powers of the courts in order to restrain alleged unlawful acts of striking employees and labor leaders. The grave abuses by the judiciary with reference to the issuance and enforcement of labor injunctions has brought the question constantly to public attention, and has resulted in a prolonged struggle for nearly fifty years to place some limits upon the powers of the Federal courts, as it is these courts in which the problem has been most acute.[17]

The real abuse in labor injunction cases has been in the issuance of injunctions, and only secondarily in the enforcement of the injunctions by contempt proceedings. The contempt power, however, has received most of the publicity and most of the legislative effort at remedying the situation. The basic abuse has been the issuance of temporary blanket injunctions which restrain the commission of a multitude of acts by all parties of a certain class, without any hearing upon the merits of the application for an injunction.[18] Labor leaders have frequently claimed that so great is the fear of the vague, all-inclusive injunctions that the mere threat of the issuance of an injunction has often caused the collapse of strikes or prospective strikes. From the employers' point of view, these injunctions are absolutely necessary in order to avoid the rioting, destruction of property, and bloodshed which have characterized so many of these disputes between labor and capital.[19]

---

[14] H. W. Ballantine, The Expansion of Criminal Equity, 13 California Law Review, 63, 64.

[15] Robert McCurdy, Use of the Injunction to Destroy Commercialized Prostitution, 19 Journal of Criminal Law 513.

[16] Statutory Extension of Injunctions, 45 Harvard Law Review 1096; Lon B. Rogers, Injunctions to Prevent Crime, 20 Kentucky Law Review 329.

[17] See the excellent work of Frankfurter and Greene, The Labor Injunction, New York, 1930.

[18] The texts of a number of these injunctions are set forth in Frankfurter and Greene, p. 229 et seq.

[19] A very good summary of the relative merits of the respective contentions of employer and employee may be found in Duane McCracken's Strike Injunctions in the New South, chapters 3 and 4.

The Fight for Remedial Legislation

The first effort to pass a measure dealing with the matter of contempts in labor injunctions was made in 1888 in the Fiftieth Congress,[20] and the same bill was again introduced in the next Congress.[21] Although no bills seem to have been introduced in the Fifty-second Congress, two were brought in the next Congress.[22] Urged by the condemnation of the punishment of Debs [23] there was a flood of bills in the Fifty-fourth Congress, no less than ten being introduced in the two Houses,[24] and a determined effort was made to pass the Hill bill,[25] which would have granted a discretionary jury trial in contempt cases arising out of a violation of an injunction issued in a labor dispute. This bill passed the Senate,[26] but the rest of the session was consumed in an effort to amend the bill in the House of Representatives so as to make the jury trial provision mandatory; and the bill eventually failed because of the end of the session.

In the Fifty-fifth Congress the fight was again taken up and seven bills were introduced.[27] In the next Congress there were nine such bills,[28] and in the Fifty-seventh Congress three bills were introduced.[29] In the Fifty-eighth Congress two bills were recorded,[30] and in the next Congress five such bills.[31] In the Sixtieth Congress there were eight such bills,[32]

---

[20] H.R. 8865, introduced by Mr. Martin, Cong. Rec., 50th Cong., 1st Sess., p. 2410. Practically all of these bills endeavored to grant a jury trial or the substitution of another judge, while many also set limits of punishment.

[21] H.R. 858, Ibid, 51st Cong., 1st Sess., p. 256.

[22] H.R. 7363, Mr. Boatner, Ibid., 53rd Cong., 2nd Sess., p. 5940; H.R. 8360, Mr. Culberson, Ibid, 53rd Cong., 3rd Sess., p. 670.

[23] In re Debs, 158 U.S. 564.

[24] S. 418, Senator Vorhees, Ibid, 54th Cong., 1st Sess., p. 36; S. 1729, Senator Call, Ibid, p. 896; S. 2416, Senator Call, Ibid, p. 2473; S. 2794, Senator Thurston, Ibid, p. 3741, adversely reported p. 4764; S. 2984, Senator Hill, Ibid, p. 4592; H.R. 311, Mr. Boatner, Ibid, p. 50; H.R. 6930, Mr. Phillips, Ibid, p. 2516; H.R. 6264, Mr. De Armond, Ibid, p. 1907; H.R. 7095, Mr. Hardy, Ibid, p. 2674.

[25] S. 2984, Ibid, p. 4592.

[26] Ibid, p. 6381.

[27] H.R. 1062, Mr. De Armond, Ibid, 55th Cong., 1st Sess., p. 90; H.R. 3329, Mr. Bartlett, Ibid, p. 1215; H.R. 1589, Mr. Brundige, Ibid, p. 93; S. 1894, Senator Clark, Ibid, p. 880; S. 4008, Senator Jones, Ibid, 55th Cong., 2nd Sess., p. 2311; H.R. 5017, Mr. Sulzer, Ibid, p. 192; H.R. 5980, Mr. Cox, Ibid, p. 456.

[28] S. 326, Senator Clark, Ibid, 56th Cong., 1st Sess., p. 91; S. 4821, Senator Bate, Ibid, p. 5883; S. 698, Senator Chilton, Ibid, p. 95; H.R. 6621, Mr. Bailey, Ibid, p. 887; H.R. 3992, Mr. Jett, Ibid, p. 280; H.R. 4916, Mr. Bartlett, Ibid, p. 625; H.R. 9922, Mr. De Armond, Ibid, p. 3258; H.R. 1073, Mr. Sulzer, Ibid, p. 58; H.R. 1116, Mr. Cox, Ibid, p. 59.

[29] S. 2099, Senator Bate, Ibid, 57th Cong., 1st Sess., p. 437; H.R. 213, Mr. Sulzer, Ibid, p. 55; H.R. 3052, Mr. Bartlett, Ibid, p. 183.

[30] H.R. 32, Mr. Sulzer, Ibid, 58th Cong., 1st Sess., p. 152; H.R. 845, Mr. Bartlett, Ibid, p. 165.

[31] H.R. 328, Mr. Sulzer, Ibid, 59th Cong., 1st Sess., p. 52; H.R. 4506, Mr. Bartlett, Ibid, p. 202; H.R. 18710, Mr. Palmer, Ibid, p. 6027; H.R. 17974, Mr. Stanley, Ibid, p. 5031; H.R. 17975, Mr. Henry, Ibid, p. 5031.

[32] H.R. 76, Mr. Henry, Ibid, 60th Cong., 1st Sess., p. 13; H.R. 148, Mr. Sabath, Ibid, p. 15; H.R. 277, Mr. Stanley, Ibid, p. 17; H.R. 425, Mr. Bartlett, Ibid, p. 20; H.R. 11843, Mr. Smith, Ibid, p. 482; H.R. 15647, Mr. Sabath, Ibid, p. 1314; H.R. 17137, Mr. Rodenberg, Ibid, p. 2051; H.R. 21561, Mr. Hubbard, Ibid, p. 5694.

while in the following Congress there were ten bills introduced.[33]

The peak was reached in the Sixty-second Congress when no less than thirteen such bills were introduced,[34] among them a bill by Mr. Clayton similar to that which became a law in the next Congress. In the Sixty-third Congress only four bills were introduced,[35] and after extended hearings and majority [36] and minority [37] reports, a contempt provision was included in the Clayton Anti-Trust Act providing that: [38]

Sec. 386. Any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed shall be proceeded against for his said contempt as hereinafter provided.

Sec. 387. Whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court. If the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

In all cases within the purview of sections 381 to 383, 386 to 390 of this title, section 412 of title 18, section 52 of title 29, and sections 12 to 27 of title 15, such trial may be by the court, or, upon demand of the accused, by a jury in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected

---

[33] H.R. 3645, Mr. Kendall, 61st Cong., 1st Sess., p. 198: H.R. 1035, Mr. Bartlett, Ibid, p. 57; H.R. 4808, Mr. Stanley, Ibid, p. 246; H.R. 4811, Mr. Stanley, Ibid, p. 247; H.R. 9766, Mr. Kendall, Ibid, p. 2126; H.R. 12175, Mr. Henry, Ibid, p. 4852; H.R. 13838, Mr. Thomas, Ibid, 61st Cong., 2nd Sess., p. 90; H.R. 13892, Mr. Sabath, Ibid, p. 91; H.R. 18410, Mr. Cox, Ibid, p. 727; H.R. 21667, Mr. Edwards, Ibid, p. 2281.

[34] H.R. 1617, Mr. Edwards, Ibid, 62nd Cong., 1st Sess., p. 81; H.R. 1720, Mr. Stanley, Ibid, p. 84; H.R. 1722, Mr. Stanley, Ibid, p. 84; H.R. 4422, Mr. Kendall, Ibid, p. 183; H.R. 4688, Mr. Henry, Ibid, p. 244; H.R. 5605, Mr. Thomas, Ibid, p. 352; H.R. 9435, Mr. Kendall, Ibid, p. 1259; H.R. 11485, Mr. Clayton, Ibid, p. 1866; H.R. 13578, Mr. Clayton, Ibid, p. 3933; H.R. 21100, Mr. Clayton, Ibid, 62nd Cong., 2nd Sess., p. 2646; H.R. 21722, Mr. Sterling, Ibid, p. 3176; H.R. 22591, Mr. Clayton, Ibid, p. 4068; H.R. 21970, Mr. Sabath, Ibid, p. 3461.

[35] H.R. 4660, Mr. Clayton, Ibid, 63rd Cong., 1st Sess., p. 1179; H.R. 5708, Mr. Stanley, Ibid, p. 1833; H.R. 5711, Mr. Stanley, Ibid, p. 1833; H.R. 1871, Mr. Bartlett, Ibid, p. 90.

[36] 62nd Cong., 2nd Sess., House Report 613.

[37] Ibid, pt. 2.

[38] 28 U.S.C.A. 386.

and impaneled as upon a trial for misdemeanor; and such trial shall conform as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid the United States exceed, in case the accused is a natural person, the sum of $1,000.00, nor shall such imprisonment exceed the term of six months. In any case the court or judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt, and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Sec. 388. The evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as provided on October 15, 1914, by law in criminal cases, and may be affirmed, reversed or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 389. Nothing contained in sections 386 to 388 and 390 of this title shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section 386 of this title, may be punished in conformity to the usages at law and in equity prevailing on October 15, 1914.

Sec. 390. No proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts.

This act was at first held unconstitutional by the decision of a lower Federal court, in the case of Michaelson v. United States,[39] upon the grounds that the jury trial provision of the act was an unwarranted impairment of the inherent powers of the courts to punish contempts without the intervention of a jury. The act was, however, upheld as constitutional and valid by the Supreme Court on appeal in Michaelson v. United States, ex rel Chicago, St. Paul, Milwaukee and Omaha Railway Company.[40] This decision cannot be characterized as of a very liberal nature, for the act was expressly upheld because "It is of narrow scope, dealing with the single class where the act or thing constituting the contempt is also a crime in the ordinary sense."[41]

The passage of the Clayton Act stilled somewhat the demand for reform, and the emergence of greater issues growing out of the World War and its problems caused a cessation of further discussion of the

[39] 291 Fed. 940.
[40] 266 U.S. 42.
[41] 266 U.S. 42, 66.

matter in Congress; but it was inevitable that sooner or later there would be a demand for widening the scope of the Clayton Act. This demand was coupled with the struggle against the narrow manner in which the injunction provisions of the act had been construed by the courts. Felix Frankfurter and Nathan Greene, the foremost students of the labor injunction,[42] stated that the act was so construed:

> That the shelter of the Clayton Act was not available when (a) a union sought recruits through organizers who were neither employees nor former employees of the complainant; (b) union organizers sought recruits among employees who had agreed not to join a union; (c) a union resorted to strikes in an industry which used labor or materials destined for or bought by interstate commerce; (d) an industrial dispute concerning union recognition, rather than the immediate terms of employment; (e) union activity was directed by defendants not against their immediate employer but against other employers whose non-union standards, because in the same craft or in a related craft of the same industry, were endangering established union standards.[43]

The demand for legislation upon contempt was evident by the introduction of eight bills in the Sixty-eighth Congress,[44] three in the next Congress,[45] four in the Seventieth Congress,[46] three in the next Congress,[47] and four in the Seventy-second Congress.[48] Among the latter was a bill which became a part of the Norris Anti-Injunction Act, which provided that[49]

> In all cases arising under this chapter in which a person shall be charged with contempt in a court of the United States, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: Provided, that this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders, or process of the court.
>
> The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereafter proceed no further, but another judge shall be designated in the same manner as is provided by law. The demands shall be filed prior to the hearing in the contempt proceeding.

---

[42] See The Labor Injunction, New York, 1930.

[43] Congressional Power over the Labor Injunction, 31 Columbia Law Review, 385, 404-5.

[44] Senator McKellar, S. 422, Cong. Rec., 68th Cong., 1st Sess., p. 88; Mr. Stengle, H.R. 570, Ibid, p. 38; H.R. 2911, Mr. Thomas, Ibid, p. 217; Mr. McKeown, H.R. 709, Ibid, p. 41; H.R. 3925, Mr. Swank, Ibid, p. 345; H.R. 654, Mr. Zihlman, Ibid, p. 40; Mr. La Guardia, H.R. 720, Ibid, p. 41; H.R. 5712, Mr. La Guardia, Ibid, p. 1154.

[45] Senator McKellar, S. 711, Ibid, 69th Cong., 1st Sess., p. 482; H.R. 3917, Mr. Moore, Ibid, p. 451; H.R. 479, Mr. La Guardia, Ibid, p. 105.

[46] S. 4202, Senator Blaine, Ibid, 70th Cong., 1st Sess., p. 7046; H.R. 99, Mr. La Guardia, Ibid, p. 20; H.R. 13293, Mr. Browne, Ibid, p. 7139; S. 849, Senator McKellar, Ibid, p. 344.

[47] S. 819, Senator McKellar, Ibid, 71st Cong., 1st Sess., p. 628; Senator Vanderburg, S. 1726, Ibid, p. 3790; H.R. 5413, Mr. La Guardia, Ibid, p. 5918.

[48] H.R. 5315, Mr. La Guardia, Ibid, 72nd Cong., 1st Sess.; H.R. 350, Mr. La Guardia, Ibid; S. 935, Senator Norris, Ibid, p. 202; S. 639, Senator McKellar, Ibid, p. 198.

[49] 29 U.S.C.A. 111.

The provisions of this act represent a compromise between the views of Norris and La Guardia, for the bill as introduced by Senator Norris would have granted a trial by jury in all indirect contempts, but the act represents a large step forward in the right direction, for the defendant in any contempt proceeding growing out of the violation of an injunction issued in a labor dispute possesses the right of trial by jury. Likewise the bill accomplishes one other reform which had been constantly urged, it provides for the retirement of the judge if the contempt consisted of an attack upon his character or conduct, and gives a positive sanction to the pious hopes expressed by Chief Justice Taft in the case of Cooke v. United States.[50] To this writer, it seems probable that there will be a labor demand in succeeding years that this retirement provision be extended to all contempt cases, for it is doubtful whether a judge is entirely free of prejudice in any case in which his commands have been disobeyed.

At the time that the act was passed there was some doubt as to its constitutionality, although it passed both houses of Congress by overwhelming majorities.[51] The President signed the bill under "protest" stating that according to Attorney General Mitchell there was some difference of opinion as to the constitutionality of certain of the injunction provisions, but that he would leave this question for the courts.[52]

State Legislation

Labor's fight against the use of injunctions and the infliction of summary punishment for violations thereof was carried on in a number of the states, and four states, Arizona,[52*] Indiana,[53] Utah[54] and Wisconsin,[55] either adopted the provisions of the Clayton Act or passed statutes providing for trial by jury for these contempts. They would also be embraced within the jury trial statutes of Oklahoma[56] and Nevada.[57]

These statutes have however generally been faced with the question of constitutionality, and the Arizona statute was declared null and void in Van Dyke v. Superior Court,[58] while in the other three states the legislative provisions have not been passed upon. To the writer, however, it seems very doubtful, in view of the statements of the Supreme Court of Wisconsin, in State ex rel. Rodd v. Verage,[59] and of the Supreme Court of Indiana, in State v. Shumaker,[60] as to the inherent character of the contempt power, whether these laws would be upheld.

The jury trial statute of Nevada was declared unconstitutional, in the case of Pacific Livestock Company v. Ellison Ranching Company,[61] while

---

[50] 267 U.S. 517.
[51] The Senate by a vote of 75 to 5, and the House by 363 to 13.
[52] See the United States Daily, March 24, 1932, pp. 1, 3.
[52*] Revised Code of Arizona, sec. 4473.
[53] Ch. 12, sec. 11, Acts of 1931.
[54] Revised Statutes of Utah, art. 49, sec. 2, subsec. 8.
[55] Wisconsin Statutes, sec. 268.27.
[56] Oklahoma Statutes, sec. 1958.
[57] Nevada Compiled Laws, sec. 8943.
[58] 211 P. 576.
[59] 187 N.W. 830.
[60] 164 N.E. 408.
[61] 213 P. 700.

the Oklahoma statute derives its validity from a provision of the constitution of that state.[62]

In Indiana, legislation was also passed recently providing for the retirement of the judge whose order has been violated, and the substitution of another judge to try the contempt charges.[63]

[62] Oklahoma Statutes, sec. 13437.
[63] Ch. 12, sec. 12, Acts of 1931.

CHAPTER VI

Constitutionality of Statutory Reform

The arbitrary character of contempt power and contempt procedure and its oppressive use in particular cases, as well as a general feeling that the power should be exercised only within a limited scope, has raised a persistent demand for reform. The judiciary as a whole, however, has failed to recognize the necessity for reform, and continues to apply the autocratic views set forth by Blackstone and Wilmot. Consequently there have been frequent demands upon the legislatures of the country for the passage of remedial legislation, and a number of statutes have been passed as a result of this pressure. The judiciary, however, has in many instances questioned the authority of the legislature to regulate, limit or define the power to punish contempts of court, upon the theory that, because of the doctrine of the separation of powers, the legislature cannot constitutionally interfere with the power of a coordinate branch of the government.[1]

Factors Determining Validity of Statutes

In five of the states there are constitutional provisions which grant the legislature the power to legislate with reference to contempts of court, but these provisions are generally so meager and have been so strictly construed by the courts that but little reform has been accomplished by virtue of these provisions.

In Arkansas the constitution provides that:[2]

The General Assembly shall have power to regulate the punishment of contempts not committed in the presence or hearing of the courts, or in disobedience of process.

In Georgia the constitution states that "The power of the courts to punish contempts shall be limited by legislative acts."[3] In Louisiana the constitution provides that "The power of the courts to punish for contempt shall be limited by law."[4] The Virginia constitution declares that "The General Assembly may regulate the exercise by courts of the right to punish for contempt."[5] And in Oklahoma the constitution not only grants authority to legislate upon the matter but also confers certain guarantees to contemnors:[6]

The Legislature shall pass laws defining contempts and regulating the proceedings and punishment in matters of contempt: Provided, that any person accused of violating or disobeying when not in the presence or hearing of the court or judge sitting as such, any order of injunction or restraint, made or entered by any court or judge of the State shall, before penalty or punishment is imposed, be entitled to a trial by jury as to the guilt or innocence of the

---

[1] This doctrine was first enunciated in State v. Morrill, 16 Ark. 384 (1855).

[2] Constitution of Arkansas, art. 7, sec. 26.

[3] Constitution of Georgia, sec. 6367.

[4] Constitution of Louisiana, art. 19, sec. 17.

[5] Constitution of Virginia, sec. 63.

[6] Constitution of Oklahoma, art. 7, sec. 25.

accused. In no case shall a penalty or punishment be imposed for contempt until an opportunity to be heard is given.

In Arkansas the constitutional provision has always been very strictly construed and the courts have refused to recognize the validity of statutes regulating or limiting the power in cases of injunction violations, since these contempts are in disobedience of process.[7] In the face of this constitutional provision courts of the state have punished several contempts by fines above the statutory limits.[8] In Georgia an act setting forth the acts punishable as contempt and attempting to limit the power to these and no others was declared unconstitutional.[9] In Virginia [10] a statute attempting to confer the right of trial by jury in indirect contempts was declared null and void, but a statute limiting the punishment unless assessed by a jury is in force.[11]

In the absence of express constitutional grants, the power of the legislature to regulate contempts depends upon two factors, the nature of the legislation and the character of the court—that is, whether the court be a constitutional or a legislative one. This classification depends upon whether the court was created by the constitution or by the legislature.[12] The question has been of particular importance in the Federal sphere, for Congress has the power to legislate with reference to the lower Federal courts because it was their creator; while the same power to legislate with reference to the contempt powers of the Supreme Court is open to question.[13] Even though the power of legislatures to regulate or limit the contempt powers of legislative courts is conceded, it has been stated that there are limits upon the power of the legislature,[14] and that they cannot so far emasculate the contempt power as to impair the power of a court to keep order in its presence and enforce its orders and decrees.

There are a number of different types of statutes purporting to regulate or limit the contempt power. Thus there are statutes authorizing merely changes of a procedural character, or fixing maximum fines and imprisonments, which may be imposed by the courts, or attempting to confer the right of trial by jury in indirect or constructive contempt cases, or may declare the acts thereafter to be punished or to be excluded from the contempt jurisdiction. Some of these statutes are constitutional and binding, while others have been declared null and void. The determination of the constitutionality of such legislation seems to be largely dependent upon whether the court views the statutory changes as radical or not.

The Period of Assumed Constitutionality

As a result of the public feeling engendered by the publicity given to the contempt question by the impeachment of Chief Justice Shippen and

---

[7] Ford v. State, 64 S.W. 879.

[8] CarlLee v. State, 143 S.W. 909; Turk v. State, 185 S.W. 472; Weldon v. State, 234 S.W. 466.

[9] Bradley v. State, 36 S.E. 630.

[10] Burdett v. Commonwealth, 48 S.E. 878.

[11] Virginia Code of 1930 Annotated, sec. 4524.

[12] See Ex parte Bakelite Corp., 279 U.S. 438, 449, where the Supreme Court termed the lower Federal Courts as constitutional courts to distinguish them from tribunals like the Court of Claims.

[13] Ex parte Robinson, 19 Wallace (U.S.) 505.

[14] Michaelson v. United States, 366 U.S. 42, 61.

Associate Justices Smith and Yeates in Pennsylvania [15] and of Judge Peck by the House of Representatives [16] and to the trial of J. V. N. Yates in the courts of the State of New York,[17] limitary statutes were passed by the legislative departments of these three governments.[18] Similar laws were also adopted by the legislature in a number of other states, until twenty-three states in the union had passed such acts by 1860.[19]

Although a survey of the cases does not disclose very many decisions in which these enumeratory, limitary statutes were discussed, yet all of these decisions upheld the power of the legislature. The opinions in these cases are remarkable for the liberality with which the judges approached the contempt problem,[20] and because there does not seem to have been the slightest question as to the constitutional competency of the legislature to pass these measures.[21]

The Morrill Case and the New Era

The first decision which challenged the authority of the legislature to constitutionally limit the contempt powers of the courts was the decision of the Supreme Court of Arkansas in 1855 in the case of State v. Morrill.[22] The case concerned the punishment of a contemptuous publication which had charged the Supreme Court with bribery. The legislature of Arkansas had passed a statute similar to that of the State of New York, providing that the enumerated acts and no others should thereafter be punishable as contempt. The Supreme Court proceeded to try and punish Morrill in violation of the statute, which was declared null and void as an unconstitutional interference with the inherent powers conferred upon the judiciary by the constitution. In reaching its decision the court argued that the judiciary had an inherent authority to punish contempt which they could exercise in the absence of statute; it appeared therefore that the power to punish contempts was not the result of legislative grant; and since the legislature did not dispense the power it could not curtail it either.

This decision changed the tendencies which had been inclining the judiciary towards liberalism, and, indeed, started a flood-tide of reactionism which has invaded nearly every jurisdiction,[22*] until it seems that the authority of the legislature to regulate or limit the contempt power is now open to grave doubts in all of the states but New York, Pennsylvania, and Kentucky, unless by the provision of the state constitution.

---

[15] See Page 22 supra.

[16] See Page 25 supra.

[17] See Page 23 supra.

[18] 1809-09 Pennsylvania Acts, ch. 78, p. 146; New York Revised Statutes of 1929, ii, 278, pt. II, ch. iv, tit. 2, art. 10; Act of Congress, Mar. 2, 1831, ch. 19.

[19] Nelles and King, 28 Columbia Law Review, 533 et seq.

[20] See particularly the liberal attitude towards publications shown in Ex parte Hickey, 4 Smedes & M. (Miss.) 751 (1845); Stuart v. People, 3 Scam. (Ill.) 395 (1840); Dunham v. State, 6 Ia. 245 (1858).

[21] Commonwealth v. Deakins, 4 Leigh (Va.) 685 (1834); Weaver v. Hamilton, 2 Jones (N.C.) 343 (1854); Harrison v. Missouri, 10 Mo. 686 (1847); State v. Blocker, 14 Ala. 450 (1848).

[22] 16 Ark. 384.

[22*] One of the first decisions was that of Bartol, J., in Ex parte Maulsby, 13 Md. 625 (1859).

Review of State Legislation

A review of the decisions shows that regulatory legislation is valid, while limitary legislation is invalid. The question at once arises as to when regulation becomes limitation, for every regulatory statute may be said to impose limitations upon an otherwise unfettered contempt power. Thus statutes which fix maximum limits of punishment, where formerly the amount of punishment was within the discretion of the court, are generally upheld as regulatory legislation, although realistically it is quite obvious that they are of a limitary character.

Statutes which merely affect procedural matters, such as admission to bail, appeal, keeping of records, the necessity for a written verdict setting forth the facts of the contempt charge, or which grant the contemnor in constructive contempts the right to be notified of the charge against him and an opportunity to present a defense, are almost universally upheld as constitutional and valid.[23] These statutes generally represent legislative acceptance or codification of the practice of the courts in contempt cases, or are of such a reasonable character as to be considered desirable by the courts. In matters of procedure it has almost universally been held that the legislature has the authority to pass any measure which does not impair the efficacy of the contempt power. The question has, however, arisen upon several occasions as to what matters are procedural, and in one case a statute authorizing a change of venue was declared unconstitutional.[24]

Statutes which set maximum penalties either by fine or imprisonment have generally been upheld so long as the amount of the provided punishment is sufficiently large to make the contempt power effective.[25] The question as to the adequacy of the punishment provided for by statute is for the court to determine, and the cases show that there are wide differences in the different jurisdictions among judges and lawmakers as to the amount of punishment which is adequate. Thus the punishment varies from thirty dollars and thirty hours in Kentucky,[26] fifty dollars and one day in Iowa,[26*] and fifty dollars and five days in Alabama,[27] to five hundred dollars and three months in Indiana,[28] three hundred dollars and six months in Oregon,[29] and one thousand dollars and twenty days in Texas.[30] In two of the states, Arkansas and Missouri, such statutes have been held unconstitutional, the first [31] because of the peculiar wording of the state constitution,[32] while the second [33] seems

[23] See the cases digested in the volumes of the American Digest, Constitutional Law, key number 50.

[24] Smith v. Speed, 66 P. 511 (Okl.).

[25] Ex parte Garner, 177 P. 162 (Cal.).

[26] Carroll's Kentucky Statutes, sec. 1291.

[26*] Iowa Code, sec. 12541.

[27] Michie's Alabama Code, sec. 6676.

[28] Burns's Indiana Statutes, sec. 1081.

[29] Oregon Code Annotated, art. 8, sec. 5026.

[30] Complete Texas Statutes, sec. 1736.

[31] Ford v. State, 64 S.W. 879 (Ark.).

[32] Constitution of Arkansas, art. 7, sec. 26.

[33] Chicago, Burlington and Quincy Railway Co. v. Gildersleeve, 118 S.W. 86 (Mo.); afterwards reversed by decision in Ex parte Creasy, 184 S.W. 914.

to be founded upon a misconception of the scope of the decision in State ex inf. Crowe v. Shepherd.[34]

Statutes attempting to meet the demand for jury trial in indirect or constructive contempts have generally been declared unconstitutional, except for the provisions of the Clayton Act,[35] which was upheld because of its narrow scope, and because it dealt with the powers of legislative courts.[36] Jury trial statutes have been declared unconstitutional in Virginia,[37] Oklahoma,[38] Nevada,[39] Arizona,[40] Colorado,[40*] and Massachusetts,[41] while similar statutes [42] in Utah and Wisconsin does not seem to have been passed upon by the courts. In Kentucky,[43] Virginia, and West Virginia, a modified form of jury trial is in force, because of a statute providing that upon summary proceedings only a nominal punishment may be inflicted, whereas if a jury be summoned it may set the amount of punishment within its discretion.[44] It would seem that statutes fixing maximum penalties for contemptuous acts might be upheld by the judiciary upon the ground that they are merely of a procedural character.

The most important of these types of statutes are those which purport to enumerate the acts punishable in summary fashion, or seek to withdraw certain acts from the contempt jurisdiction. These enumeratory statutes are of two types, those which list the acts punishable and provide that these and no others shall be so punishable, and those which simply enumerate exhaustively the contemptuous acts. These enumeratory statutes without the "no other" clauses are generally rendered ineffective by the construction which the courts have chosen to give to the acts.[45]

Statutes enumerating the acts punishable and containing "no other" provisions have generally been declared unconstitutional [46] as an unwarranted interference with the powers of a coordinate coequal branch of the government, but in several of the older states in which such laws have long been on the statute books, they are still in force.[47]

The only laws which have attempted to remove certain acts from the

---

[34] 76 S.W. 79 (Mo.), see dissenting opinion of Justice Lamm in the Gildersleeve case, supra.

[35] See Chapter V.

[36] Michaelson v. United States, 266 U.S. 42.

[37] Carter v. Commonwealth, 32 S.E. 780.

[38] Smith v. Speed, 66 P. 511; changed by constitutional provision in 1907.

[39] Pacific Livestock Co. v. Ellison Ranching Co., 213 P. 700.

[40] Van Dyke v. Superior Court, 211 P. 576.

[40*] Cooper v. People, 22 P. 790; Hughes v. People, 5 Colo. 436.

[41] Walton Lunch Co. v. Kearney et al., 128 N.E. 429.

[42] Revised Statutes of Utah, art. 104, sec. 45, subsec. 1; Wisconsin Statutes, sec. 268.27.

[43] Richardson v. Commonwealth, 133 S.W. 213.

[44] Carroll's Kentucky Statutes, sec. 1291; Virginia Code of 1930, sec. 4524; West Virginia Code of 1932, sec. 6024.

[45] See Chapter VI.

[46] Bradley v. State, 36 S.E. 630 (Ga.); State ex inf. Crow v. Shephard, supra; In re Bowers, 104 A. 196 (N.J.); Langdon v. Wayne Circuit Judges, 43 N.W. 310 (Mich.); Kelly v. Montebello Park Co., 141 Md. 194.

[47] New York, Act of 1829, Cahill's Complete Statutes, art. 31, sec. 750; Pennsylvania, Act of 1809, Purdon's Pennsylvania Statutes, art. 17, 2041.

operation of the contempt power in express terms, have been with respect to publications. Thus acts of the legislature in Kentucky,[48] Pennsylvania,[49] and Louisiana [50] seem to have been successful in exempting the punishment of publications, but in California a similar act was held unconstitutional,[51] while in Florida there is also a provision with reference to publications made during vacation.[52] These acts all seem to be valid as there are no cases in which publications have been summarily punished in those states.

In conclusion, it may be said that except in the states of Kentucky, New York, and Pennsylvania, where the courts have applied limitary legislation without question, and except for the few states where constitutional provisions are really effective, that the legislature is without power to accomplish reforms in the contempt power other than to legislate as to minor procedural matters and to set maximum penalties, provided that they be large enough to be sufficient.

[48] Carroll's Kentucky Statutes, sec. 1295.
[49] Purdon's Pennsylvania Statutes, art. 17, sec. 2044.
[50] Louisiana Code of Practice (Dart), art. 131.
[51] In re Shortridge, 34 P. 227.
[52] Compiled General Laws of Florida, sec. 4162.

CHAPTER VII

Invalidation of Legislation by Judicial Construction of the Act of Congress of March 2, 1931

One method which the courts have very successfully resorted to in order to uphold their contempt powers when threatened by the passage of limitary legislation, has been the utilization of their authority to construe the action of the legislature in such a manner as actually to invalidate the legislation to all intents and purposes.

There are any number of examples of this practice on the part of the judiciary, but in all probability the best example is the manner in which the various Federal tribunals have succeeded in practically nullifying the limitary act passed by Congress March 2, 1831. This is a particularly good example because the antecedents of the bill are well known, and the purpose of the legislators and the meaning of the bill seems to have been perfectly evident to all except the members of the judiciary who have "construed" it.

Antecedents of the Act of March 2, 1831

The direct cause for the passage of the act of Congress of March 2, 1831, was the celebrated Peck-Lawless contempt case. The contempt proceedings received wide publicity and finally culminated in the preferring of articles of impeachment against Judge Peck by the House of Representatives, and his acquittal by the Senate after a sensational trial.[1] It appeared that he had acted under blanket provisions of chapter 20, section 17, of the Judiciary Act of 1789, which had provided that "All the said courts shall have power . . . to punish, by fine and imprisonment, at the discretion of the said courts, all contempts of authority in any cause or hearing before the same." It was perfectly obvious that one injustice had been committed under the provisions of this act, because of the wide authority which it conferred, and it was also obvious, in view of the arbitrary character of contempt procedure, that similar happenings would likewise occur.

The Passage of the Act of March 2, 1831

Congress had been told by William Wirt that Judge Peck had acted within the boundaries of the law of contempt, and that Congress had power to change that law if it did not consider it wise or expedient.[2] Congress did not long delay before setting in motion the machinery to change the law of contempt, as it existed under the act of 1789. The very next day after the acquittal of Judge Peck by the Senate, a resolution was offered in the House of Representatives by Mr. Draper to the effect "That the committee on the judiciary be directed to inquire into the expediency of defining by statute all offenses which may be punished as contempts of the courts of the United States".[3] In support of this resolution, Mr. Draper is reported as having remarked that

---

[1] The proceedings are set forth fully in A. J. Stansbury, Trial of James H. Peck, Boston, 1833.

[2] Stansbury, p. 503.

[3] 39 Niles Register, 408.

He wished to know whether, if he, as a member of this House, entered the newspapers to assert an opinion, it was not competent for any other person to come into the same forum, on equal ground, to show the incorrectness of that opinion. That this was the right of all, he contended, and the object of the resolution was to put the right beyond the reach of doubt or dispute.... He knew of no reason why the law should not now be altered or defined.[4]

This resolution was carried, and in conformity therewith, Buchanan, chairman of the Judiciary Committee, brought in such a bill ten days later.[5] This bill provided as follows:

That the powers of the several courts of the United States to issue attachments and inflict summary punishments for contempt of court, shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice; the misbehavior of any of the officers of the said courts, in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.[6]

No further mention of Buchanan's bill is to be found in the records of the Twenty-first Congress until February 28, when the House of Representatives passed the bill and sent it to the Senate. The same day the Senate considered the bill in committee of the whole, and March 1 it was referred to the Senate Judiciary Committee. The next day Mr. Webster reported the bill with an amendment, in the form of a second section, and the bill as thus amended was passed by the Senate and sent back to the House for concurrence in the amended bill. The same day the House agreed to the Senate amendment, and passed the bill with an amendment of its own, on the motion of Mr. Buchanan. The bill was immediately sent to the Senate, which agreed to the House amendment and the bill was thus passed. On the same day, March 2, the bill was sent to the President, Andrew Jackson, who immediately signed it, and the bill became law that day.[7]

This act as it was finally passed was worded as follows:

Section one:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court, shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance of any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, decree or command of said courts.

Section two:

And be it further enacted, that if any person or persons shall, corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer, in any court of the United States, in the discharge of his duty, or shall, corruptly, or by threats or force, obstruct or impede, the due administration of justice therein, every person or persons, so offending, shall

---

[4] Ibid.

[5] Gales & Seaton's Register of Debates, 21st Cong., 2nd Sess., cols. 560-1.

[6] Bills of the Twenty-first Congress, House Bill No. 620.

[7] These meager details are contained in the private journals of the House and Senate, and do not appear in print. These entries may be found in Frankfurter and Landis, 37 Harvard Law Review, 1010, 1026 note.

be liable to prosecution therefor, by indictment, and shall, on conviction thereof, be punished, by fine not exceeding five hundred dollars or by imprisonment, not exceeding three months, or both, according to the nature and aggravation of the offense.[8]

Unfortunately the records as to the amendment and passage of this act are extremely meager. No record was kept as to vote, if any was taken of the specific provisions of the amendments, or of the debate in either the House or the Senate. This was probably due to the fact that the bill was considered in committee of the whole, in which no records are kept and was passed in a very hurried fashion in the final days of a short session of Congress, in which the pressure of embryo legislation was so great that one hundred and fifty bills which passed one House died for want of action in the other.[9] It is known, of course, by the simple process of elimination, that the two amendments together comprised the second section of the act, but just what portion owes its existence to Senate action and what to that of the House of Representatives is not clear. The only comment on the passage of the act is to be found in Gales & Seaton's *National Intelligencer,* in the edition of March 3, 1831, which stated:

The Senate's amendment to the Act declaratory of the courts of the United States on the subject of contempts, added a second section to punish all attempts to corrupt or intimidate jurors, etc., was amended on the suggestion of Mr. Buchanan, and then agreed to.[10]

Source of the Act and Intent of Framers

Professors Frankfurter and Landis, in an article in the Harvard Law Review,[11] have maintained that the act of 1831 was predicated upon a limitary statute passed by the legislature of the state of Pennsylvania in 1809 [12] after several similar unpleasant experiences with the exercise of the contempt power by the judges of that state. It is true that Buchanan was from Pennsylvania, and that he discussed the act in question in the argument before the Senate in the Peck impeachment proceedings, and it seems very likely that he relied upon the Pennsylvania statute in framing his bill.

On the other hand, two other writers, Messrs. Nelles and King, in an article in the Columbia Law Review [13] have pointed out that the views of Professors Frankfurter and Landis are inaccurate since they failed to take into account the influence exercised upon the passage of the Federal law by an act passed by the New York Legislature in 1829.[14] Upon a close inspection of the three acts, it would seem that this proposition is correct [15] and that the Federal act was influenced by the New York statute as well as by the Pennsylvania law.

---

[8] Act of March, 1831, ch. 98, 4 Stat. 487.
[9] National Intelligencer, March 12, 1831.
[10] Other newspapers of the time merely note the passage of such a bill; if they mention it at all.
[11] The Power of Congress over Procedure in Criminal Contempts, 37 Harvard Law Review, 1010.
[12] 1808-09 Pennsylvania Acts, ch. 78, p. 146, see pp. 21 and 23.
[13] Contempt by Publications, 28 Columbia Law Review, 401 and 525.
[14] New York Revised Statutes, 1829, pt. iii, ch. iii, tit. 2, art. 1, sec. 10.
[15] The three acts may be found set out in parallel columns in 28 Columbia Law Review, 401, 528-9.

The "joker" in the Federal act was the use of the wording "or so near thereto as to obstruct the administration of justice." It seems to have had its origin in the more precise language of the New York statute providing for the punishment of "any breach of the peace, noise, or other disturbance, directly tending to interrupt its proceedings," and was evidently added by Buchanan in order to cover disturbances in such physical proximity to the court as to interfere with the proceedings.

The reason why the bill as introduced by Buchanan, and was so amended by the House and the Senate as to add an entirely new section to the original is not known, as there nowhere appears any "declaration of intent" on the part of Congress, and as was stated above, there is no record of any debate which may have taken place at the time the bill was passed. Ostensibly section two of the act provided that certain reprehensible acts should thereafter constitute a criminal offense, triable on indictment, and sets forth rather severe penalties as punishment for the commission of these acts. The acts enumerated were already punishable in a summary manner by the courts under the common law as set forth by the Supreme Court in an early decision.[16]

Two explanations for the existence of this section of the act may be advanced, and each seems as feasible as the other. Thus, this section may have been added to provide a cumulative or alternative method for the trial and punishment of certain contemptuous acts of a grave character, with the hope that thereafter the courts would be able to save themselves some embarrassment by shifting the unpleasant burden of punishing such acts as contempts to the shoulders of twelve good men and true. Thus if this procedure were to be made use of by the courts, the judiciary could no longer be accused of sitting in judgment in their own cases. On the other hand, it may be just as plausibly argued that this section was added in order to provide punishment for the commission of certain unlawful acts, formerly punishable by the exercise of the contempt power, but which the courts could no longer reach in this manner because of the limitations imposed upon them in section one of the act.

It is unfortunate that the intent of Congress in adding this section cannot be ascertained factually, for the interpretation given to this section of the act determines in no small measure the limitary character which one may choose to give or deny to the whole act. Thus, if one desires to reach the conclusion that the act was intended to limit drastically the contempt powers of the judiciary, one may adopt the view that this section was added in order to provide punishment for those who would now be free from punishment by means of the summary contempt jurisdiction. If, on the other hand, one does not wish to believe that the act was intended to operate as a drastic limitation, but had few ramifications other than the Peck case, one may cite the second section merely as evidence of the intent of Congress to offer the courts a cumulative or alternative method of punishing certain contempts of a peculiarly criminal character. It would seem more than likely, however, that a Congress so pressed for time would not bother itself with merely offering a cumulative method of punishment to the courts.

---

[16] Justice Johnson in Anderson v. Dunn, 6 Wheaton (U.S.) 204.

The view that the second section was intended to have been exclusive rather than alternative is upheld in the first two decisions construing the act.[17] This view was not accepted, however, by the Supreme Court in later decisions,[18] and since the Supreme Court has spoken, the cumulative viewpoint now forms the rule of construction.

Of course there is no such thing in a definite sense as a legislative intent, but the intent of the legislature with reference to a particular act may perhaps be gleaned from a consideration of the history of the events which lead to its passage, the opinions of those legislators who concurred in or opposed its passage, and the comments of those who were living at the time and who thus possessed first-hand knowledge as to its enactment.

Unfortunately there is practically no direct evidence as to the intent of those who were instrumental in the initiation and passage of the bill. The motion by Mr. Draper, which resulted in the bill, and the statement which he made at that time,[19] would seem to indicate that his action was inspired by a desire to curtail or define the contempt jurisdiction in respect to publications out of court.

Buchanan, who framed the bill, which with amendments became the act of 1831, made several statements in speeches before Congress in later year. Thus, speaking of the Peck trial and the act, he said on March 2, 1836:

> The Judge was acquitted, and, at the moment, I thought this decision had placed the freedom of the press in danger. If the sedition law were clearly unconstitutional, and nobody now doubts it; if Congress could not confer upon the courts of the United States, by express enactment, any power over the question of libel, I thought it monstrous that a judge, without the intervention of a jury, under highly excited feelings, should be permitted to try and to punish libels committed against himself, according to his will and pleasure. My apprehensions were of but short duration. A few days after the acquittal of this judge, the Senate, without one dissenting voice, passed a bill, not to create a new law, but declaratory of what the old law, or rather what the Constitution was, under which no Federal Judge will ever again dare to punish a libel as a contempt. The constitutional provision in favor of the liberty of the press was thus redeemed from judicial construction.[20]

Again on May 12, 1842, when Congress was considering the conduct of Judge Hall, in connection with a resolution to restore to Ex-President Jackson the amount of the fine which had been imposed upon him in 1814, he said:[21]

> It appears from this declaratory law, which passed Congress unanimously after the trial of Judge Peck, that this expulsion could under no circumstances be considered a contempt of court, etc.... He would refer to a law drawn up by himself, after the trial of the impeachment of Judge Peck, on which the doctrine of contempts was fully discussed before the Senate. This law passed both Houses of Congress unanimously. It was a declaratory act; an act declaring not what the law should be thereafter, but what it had always been in time past, as well as what it would be in time to come. He recollected that a Senator had informed him, after the bill had passed the House, and whilst

---

[17] Ex parte Poulson, Fed. Cas. 11,350; United States v. Holmes, Fed. Cas. 15,382.

[18] Savin, Petitioner, 131 U.S. 267; Cuddy, Petitioner, 131 U.S. 280.

[19] 39 Niles Register, 408, set forth on Page 53 supra.

[20] John Bassett Moore, The Works of James Buchanan, vol. 3, p. 13.

[21] Ibid, vol. 5, pp. 244, 248-9.

it was pending in the Senate, that he had submitted it to the late Chief Justice Marshall, who, after examination, declared it was already the law of the land, and he thought it would be wise to embody it in this declaratory act.

Buchanan, therefore, viewed the act of 1831 not as a limitation upon the contempt powers of the courts, but merely as a declaration of the scope of the power which they already possessed. Superficially, it would appear that by these statements Buchanan, the person who was largely responsible for the wording of the act, put himself on record to the effect that the statute was not intended to be in limitation of the contempt power, and that the sole intent which had moved him in framing the act was to prevent the recurrence of the action taken by Judge Peck. But Buchanan's comments may be given another meaning, after having considered the views which he and the other House Managers had expressed before the Senate in the Peck impeachment trial.

At Peck's trial the Managers expressed the view that the contempt power was based merely upon the law of necessity, and that the law was only what they thought could be said to fall fairly within the term "actual necessity." The Managers several times admitted, although with some reluctance, that the courts had the power to punish prejudicial publications which might influence the decision of a jury or which might intimidate a judge in connection with his decision in a pending case.[22] Buchanan, however, took the position that the courts were without authority to punish publications of any kind as contempt of court.[23] Thus Buchanan, because of his views as to the proper limits of the contempt jurisdiction, could have stated that the act was not limitary but merely declaratory, while in fact it may have been intended to curtail considerably the power of the court.

It has been argued that the act could not have been intended to curtail drastically the limits of the summary power by reason of the fact that the act was passed without a dissenting voice, although a majority of the Senate had acquitted Peck of abuse of the contempt power in a very questionable use of that power.[24] It is true that, even leaving aside various considerations which may have contributed to the verdict in the Peck impeachment, there must have been some reactionaries in either the Senate or House who did not favor the passage of the act of March 2, 1831. The absence of recorded dissent may be accounted for in two ways, namely, the vote upon the passage of the act was not recorded and in all probability no count was taken; and, as the bill was considered in the committee of the whole, no record of the proceedings and arguments pro and con was kept.

There are, however, several facts which would seem to bring into question whether Congress had intended the act to drastically limit the contempt power. The first is the absence of comment by the newspapers, which had carried in great detail the proceedings against Judge Peck. The second fact is that Chancellor Kent, in his Commentaries,[25] failed to

---

[22] Per Spencer, Stansbury, 291, 298-9.

[23] Stansbury, 355.

[24] See opinion of Judge Killits in United States v. Toledo Newspaper Co. et al., 220 Fed. 458, 481.

[25] Chancellor Kent merely stated that the act defined and limited the provisions of the Judiciary Act of 1789, *Commentaries*, 2nd ed., p. 300.

point out the extreme limitary character of this act until after the drastic limitation had been pointed out by Justice Baldwin in the Poulson case.[26]

By considering these factors, but with a shift in emphases, one may reach a number of different conclusions as to the intent of the legislature, and of the meaning which should be given to the act which it put upon the statute books. An examination of the various authorities who have considered the subject shows four different opinions, two of which are direct opposites, while the other two seem to be an effort to effect a compromise. Thus several writers[27] upon the subject have taken the dogmatic position that the act was intended to limit drastically the contempt powers of the judiciary, and that the "joker" provision was intended solely to cover disturbances in close physical proximity to the court. Most of the cases, however, take the opposite view: that the act was not meant to be a drastic limitation of the contempt jurisdiction, but merely a restatement by the legislature of the lawful scope of that jurisdiction, and that the "joker" provision was intended to embrace acts, no matter where committed, which were so near to the court as to have an obstructive effect upon the course of justice. On the other hand, it has also been claimed that the act was intended primarily to safeguard the constitutional guarantees of free speech and free press, which were mentioned so frequently by the House Managers in the Peck impeachment trial, from the realm of summary conviction for contempt of court. The final viewpoint is that the act was intended only to prevent the recurrence of what had happened in the Peck case; that is, the punishment as contempt of court of a publication relating to a case no longer pending.

The Criterion of Physical Proximity

The construction of the whole act practically depends upon the interpretation which one chooses to give to the terminology "so near thereto as to obstruct the administration of justice," for a strict construction of this phrase would deprive the court of the power to punish a large number of acts considered as contempt of court at common law, whereas a loose construction would make the phrase a catch-all, covering all contemptuous acts, because the very basis of the contempt power is the obstruction to the administration of justice.

The question which is presented is whether this phraseology should be construed to provide for the punishment only of acts near to the court in a literal phyical sense to the exclusion of obstructive acts committed at a distance. It would seem that the literal meaning of the terminology would conjure up the idea of physical nearness or propinquity, and that it would take a judge to find any other logical meaning for the language. In view also of the criminal character of contempts of court, it would seem that the provisions of the statute should be strictly construed. As before noted, the acceptance of this criterion may be greatly strengthened by viewing section two of the act as an exclusive and not as a cumulative method of punishing certain contemptuous acts.

---

[26] Ex parte Poulson, Fed. Cas. 11,350.

[27] Frankfurter and Landis, 37 Harvard Law Review, 1010; Nelles v. King, 28 Columbia Law Review 401, 525.

The strongest factor in favor of the acceptance of this criterion of physical propinquity, involving as it does the view that the act greatly lessens the contempt jurisdiction, is the fact that this was the interpretation first given to the act by the courts.

The first case which arose in the Federal courts concerning the interpretation of the act of March 2, 1831, was that of Ex parte Poulson,[28] several years after the passage of the act, decided by Justice Baldwin of the Federal Circuit Court of Pennsylvania in 1835. In this case the court decided that the provisions of this act had deprived it of the power to punish for contempt in order to protect itself, its suitors, or officers from prejudicial publications, even though made with reference to a pending case. This construction was adopted by the court although it entertained grave doubt as to the wisdom which had inspired the legislative act, and commented at some length as to the lamentable and impotent position in which Congress had seen fit to place the courts.

There are two factors which favor the construction given to the act by Judge Baldwin in this case: One is that the opinion was written shortly after the passage of the act, and thus is entitled to the high consideration accorded to contemporaneous constructions, by one possessed of first-hand knowledge. The other is that the obvious reluctance of the court to reach such a decision, which meant that it could not protect itself or its suitors from unlawful interference with its proceedings, would seem to offer evidence of its validity.

Several years later the same justice delivered a similar opinion in the case of United States v. Holmes.[29] It was most unfortunate that the opinion in this case had to be rendered by the same justice who had decided the Poulson case, for the opinion in the later case seems to have been a mere reiteration of the views expressed in the former. For this reason the opinion in the Holmes case is practically a negligible quantity with reference to the views it enunciated, and is not entitled to any of the weight which would have been accorded to the opinion of another judge, had another reached the same conclusions and thus corroborated the views expressed in the Poulson case.

The point of view taken by Justice Baldwin as to the purpose and effect of the act of 1831 may be said to have been adopted by the Supreme Court of the United States in 1884 in the case of Ex parte Robinson,[30] although the statements of the court were obiter. The question at issue in this case was whether an attorney could be disbarred as punishment for contempt of court, and in the course of its opinion the court discussed the meaning of the act of 1831, and stated:

> As thus seen, the power of these courts (lower Federal courts) in the punishment of contempts can only be exercised *to insure order and decorum in their presence*, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgment, and processes.[31]

In the face of an authority and precedent, the Circuit Court of Appeals of the First District recently reversed a contempt conviction in the case

---

[28] Federal Cases 11,350.
[29] Federal Cases 15,382.
[30] 19 Wallace (U.S.) 505.
[31] Ex parte Robinson, 19 Wallace (U.S.) 505, 510.

of Coll v. United States [32] upon the ground that to view the "so near to" provision other than as a physical nearness "falls little short of nullifying the act of 1831".[33] In this case Coll had been summarily tried and convicted for a contempt of court which consisted of an attempt to bribe a witness at his home about four miles from the court house, and the lower court had adopted the view that the conduct would have been punishable under the act, because obstructive, if it had taken place twenty miles from the court room.[34]

Likewise a number of commentators and writers have expressed the opinion that the act was a drastic limitation upon the powers of the courts. Chancellor Kent in his *Commentaries,* in the edition of 1832, stated that the act defined and limited the provisions of the Judiciary Act of 1789.[35] In the edition of 1836 and in later editions of his work he stated, however,[36]

> The Act of Congress reaches and prohibits all interference by attachment and summary punishment for contempts committed out of the presence of the court, by libels upon the court and the parties in pending causes; and it is a very considerable, if not injudicious abridgment of the immemoriably exercised discretion of the courts in respect to contempts. That act had withdrawn from the courts of the United States the common law power to protect their suitors, officers, witnesses and themselves, against the libels of the press, however atrocious, and though published and circulated pending the very trial of a cause. The case (Ex parte Poulson) was one which showed, in a very strong light, the unreasonableness of the law, in leaving the suitor unprotected at the moment when he stands most in need of it, and when the mischief to him might be great and remediless. The want of such protection, and the undue distrust which the denial of the common law power over contempts implies, tends to impair, in the estimation of the public, the value of the administration of justice.

If this statement represented the opinion of Chancellor Kent, one of the foremost of American legal scholars, and one who had the opportunity of viewing the act of 1831 at the time of its passage, it would be entitled to a great deal of weight in determining the actual intent of the act. It seems clear, however, that this was not the expression of the independent opinion of this eminent scholar, but was merely the expression of the law as laid down by Justice Baldwin in the Poulson case. Several factors lead to this belief: first, he recognized no drastic limitations upon the contempt power by the act of 1831 in the 1832 edition of his work; secondly, this view of the law is expressed in the edition of his work which appeared soon after the decision in the Poulson case; thirdly, he cited the Poulson case as his authority; and fourthly, his language is that of Justice Baldwin, and he expressed no opinion as to any limitations which had not already been pointed out in the Poulson case, although it must have been evident that there were other limitations upon the exercise of the contempt power. Chancellor Kent may, therefore, be dismissed as any authority for the point of view

---

[32] 8 F. (2d) 20.

[33] Quoting the opinion of Frankfurter and Landis, 37 Harvard Law Review, 1010.

[34] It is interesting to note the prosecution alleged in this case that the contempt power had been used to punish criminal acts for which, because of the influence of the defendant, it was thought impossible to convict.

[35] Kent's *Commentaries,* 2nd ed., p. 300.

[36] Ibid, 3rd ed., p. 300.

that the act of 1831 was a drastic limitation upon the powers of the federal courts, for his comment must obtain its sole validity from a consideration of the Poulson case itself.[37]

Rapalje, in his text-book on contempt, stated:

> Mere libels on the judge as a man and an officer, printed in a newspaper, are not contempts. The force of public opinion in this country in favor of the freedom of the press has restrained the free exercise of the power to punish this class of contempts, and in many jurisdictions statutes have been enacted depriving the courts of the power to punish them. It has been taken from the federal courts by the act of Congress of 1831, which act deprives those courts of the common law power to protect by this process their suitors, witnesses, officers, and themselves against the libels of the press, though published and circulated pending the trial of a case therein.[38]

Neither is this statement an expression of opinion on Rapalje's part, but a mere repetition of the statement which Justice Baldwin set forth in the Poulson case. This is merely in line with the policy which the author expressed in the preface to his book.[39]

C. J. Ingersoll, in his pamphlet "General Jackson's Fine," said of the act of 1831: "The power of punishing contempts paid the penalty of being deprived of some of its validity by being suppressed by act of Congress."[40] Whether this statement was also based upon the decision in the Poulson case or not is unknown, but it implies a considerable limitation upon the contempt power.

The view that the act of 1831 was intended to have been very limitary in character, and that the "joker" provision should be approached from a common sense construction of its wording, has been adopted by several prominent writers in this field[41] after very careful consideration of the background of the Peck case and the passage of the act.

It seems to the present writer that the only plausible attempt which has been made to refute this construction upon historical grounds is to be found in the opinion of Judge Killits, of the Federal District Court for the Northern District of Ohio, in the case of United States v. Toledo Newspaper Company,[42] and that none of the decisions of the Supreme Court in recent years as to the act has been of a scientific character.

The Compromise Constructions

Some of the courts, in construing the act, have come to the conclusion that the legislature intended only to prevent the recurrence of another unpleasant episode like the Peck case; while others have expressed a belief that the act was intended to delimit the contempt power in view

---

[37] Frankfurter and Landis, in their article in Harvard Law Review, vol. 37, 1010, at 1028 stated that "The great contemporary Chancellor Kent, though he deplored the Act, affirmed its limitation of common law assumptions." This statement would seem to give the Chancellor's comment an independent value. If so the statement is incorrect.

[38] Rapalje on Contempt, sec. 56.

[39] "The author's aim has been to state the law as he found it laid down in the books, leaving to others the task of suggesting reforms when needed."

[40] Ingersoll, p. 29. This pamphlet was written as propaganda in connection with the fight for restitution of the fine imposed upon Jackson in 1814 by Judge Hall.

[41] Frankfurter and Landis, 37 Harvard Law Review, 1010; Nelles & King, 28 Columbia Law Review, 401, 525.

[42] 220 Fed. 458.

of the constitutional guarantees of free speech and free press. These two constructions will be considered together, for in essence they are the same, varying only in degree. This construction has frequently been expressed in the cases in which the court has upheld the obstructive criterion to a limited degree.

This compromise interpretation seems first to have been expressed by a lower Federal court in an obiter statement in the case of In re May:[43]

> The act was passed for the purpose of preventing the courts from interfering with newspaper comments upon trials.

And to the same effect are statements in Moore v. Montana Ore Company,[44] and In re Daniels,[45] although the latter case recognized that certain publications could still be punished by means of the summary contempt jurisdiction.

In the case of United States v. Huff, where the obstructive effect criterion was adopted, the court said:

> Congress was evidently of the opinion that the subjecting of judges to criticism in the press, if it did not obstruct the administration of justice, was of advantage to the judges, and that the citizen should not be punished therefor.... The judge was deprived by the act of all immunity from outside criticism which affected him only as an individual. The court, and the judge, as an arm of it, was still carefully protected by the act from all criticism that interfered with or obstructed the proper administration of justice.[45*]

Likewise, in the case of In re Independent Publishing Company, the court said:

> A fair and reasonable construction of this declaratory statute in the light of these proceedings is that Congress intended to so limit the power of the courts to punish for contempt that the summary authority exercised by Judge Peck, in a case where the *judicial authority had ceased,* would thereafter be prohibited.[46]

The Criterion of Obstructiveness

By far the majority of the opinions of the courts construe the "joker" provision as having meant an obstructive rather than a physical nearness to the courts, and the act, therefore, as having authorized the summary punishment of these obstructive acts, no matter how far away from the courtroom they may have been committed in actual fact. This point of view seems to depend in part upon the belief that the act is committed where it takes effect, upon an analogy to the doctrine of constructive presence as developed in the criminal law. This idea of obstruction has been extended to cover acts which merely tend to obstruct without being in fact obstructive upon the theory that the court is not forced to wait until its proceedings are obstructed before it can act.[46*]

---

[43] 1 Fed. 737.

[44] 105 Fed. 337.

[45] 131 Fed. 95. This case is often cited as Cuyler v. Atlantic & North Carolina Railway.

[45*] 206 Fed. 700, 704.

[46] 240 Fed. 849, 854.

[46*] Toledo Newspaper Co. et al. v. United States, 247 U.S. 402.

This construction seems to have been largely the result of the fact that the act of 1831 did not expressly authorize the courts to punish persons who attempted to influence the administration of justice by the bribery or intimidation of jurors or witnesses in pending cases. Because of the enormity of such offenses and of their effect upon the administration of justice, the courts were of the opinion that they should have power to punish such offenders instantly, without having to proceed in the ordinary method of the criminal law. Obviously the only method whereby these offenses could still be treated as contempts of court was by a liberal construction of the phraseology "so near thereto as to obstruct the administration of justice," a construction which emphasized "obstruct" and minimized "near".

The Case of United States v. Anonymous—

The criterion of obstructive effect seems to have been first enunciated in 1884 by Judge Hammond in the case of United States v. Anonymous. In this case the judge punished an attorney for his insolent and insulting behavior toward an examiner appointed by the court. Although it would seem that the defendant since he was an attorney, could have been punished under the act as an officer of the court, the judge nevertheless went into the history of the act and suggested the manner in which it ought to be construed. After recognizing that the object of the statute was to enlarge the liberty of criticism of the acts of the judiciary, he continued: [47]

> **In my judgment, the courts will find that the legislature has not taken away any valuable power, when these statutes are properly understood.... It may be that, after all, it is a mistake to say that all contempts not committed in the presence of the court are constructive only. The mere place of the occurrence may not be an absolute test of that question, and it may depend upon the character of the particular conduct in other respects besides the place where it happens.... Wherever the conduct complained of ceases to be general in effect, and invades the domain of the court to become specific in its injury—if it be constructive because of the place where it happens, because of the direct injury it does in obstructing the administration of justice in that particular case, the power to punish it has not yet been taken away by any statute, however broad its terms may apparently be.**

Although it would appear that this statement by Judge Hammond was obiter, it has been cited with approval by other Federal courts in a number of later decisions upholding the obstructive effect point of view.

This nullifying construction of the act was first given impetus by decisions of the Supreme Court in 1889, when several cases in which lower courts had exercised the summary contempt jurisdiction in questionable cases came before it on appeal. The first case, that of Savin, Petitioner,[48] was the result of a contempt conviction for several attempts to bribe a witness, one in the hallway of the courtroom, and the other in the room set apart for the examination of witnesses. The second case, that of Cuddy, Petitioner,[49] concerned an attempt to influence a prospective juror in a case then pending.

---

[47] 21 Fed. 761, 769.

[48] 131 U.S. 267.

[49] 131 U.S. 280.

The Savin and Cuddy Cases—

In the Savin case the defense contended that an attempt to bribe a witness was no longer punishable except as a criminal offense under the second section of the act of 1831, and cited the Poulson case as supporting this contention. The Supreme Court, however, speaking through Mr. Justice Harlan, denied the correctness of this point of view, and held that in this case the unlawful act was clearly punishable by the court as near thereto, since the court was presumed to be present in any portion of the courthouse set apart for its use. The case was very important for two reasons: it overruled the view accepted in the Poulson case [50] that section two of the statute was meant to apply to acts no longer punishable as contempt, and substituted the construction of section two as an alternative procedure; and it considerably widened the contempt jurisdiction by the broad definition which it gave to the term "presence of the court."

The opinion in the second case was also prepared by Mr. Justice Harlan, and it seems to have been greatly influenced by the decision in the Savin case. The action of the lower court in punishing Cuddy for contempt was upheld upon the technical ground that the record did not show that the attempt to influence the talesman was not made in the presence of the court. On this technicality the court was able to decide the case without expressing any opinion as to whether the attempt to influence a jury outside the court could be considered as coming within the wording "so near thereto as to obstruct the administration of justice."

It was unfortunate that the place where the contempt took place was not set forth in the record in the Cuddy case, for otherwise the Supreme Court might have been compelled to pass upon the meaning of the "joker" provision, and the law of contempt might then have received a clear pronouncement, which would have obviated much of the uncertainty about the meaning of the act which has since existed and might indeed have resulted in an entirely different construction than that subsequently adopted. That there was some doubt as to the precise meaning which should be given to the wording may be inferred from the absence of the broad statement, found in later cases, that the test of the contempt jurisdiction is not where the act took place, but the tendency of the act to obstruct the administration of justice. That the court considered this construction of the wording, but avoided a decision on the question, is indicated by the statement that

> Whether the attempt to influence the conduct of the juror . . . was . . . within the meaning of the statute, misbehavior so near to the court as to obstruct the administration of justice, however distant from the court building, may have been the place where the appellant met him, is a question upon which it is not necessary to express an opinion.[51]

The Brule Case—

The next decision in point of time was In re Brule,[52] decided in 1895 by District Judge Hawley. Brule had been charged with contempt because he had paid one Langevin, a material witness for the government

---

[50] Ex parte Poulson, Fed. Cas. 11,350.
[51] 131 U.S. 280, 284.
[52] 71 Fed. 943.

in a criminal prosecution then pending, the sum of four hundred dollars in order to induce the witness to avoid the service of a subpoena, and, as a result the government had been deprived of his service as a witness. The bribery took place in a private building about a quarter of a mile from the court house. In his opinion the judge relied in large measure upon the cases of Savin, Petitioner,[53] and Cuddy, Petitioner,[54] but failed to note any fundamental difference between those cases and the one in question, although the Savin case had been decided expressly on the ground that the misbehavior had taken place in the presence of the court, and although in the Cuddy case the Supreme Court had refrained from expressing any opinion as to whether misbehavior, no matter how far distant from the courtroom, could be construed to be punishable as contempt "so near thereto as to obstruct the administration of justice." The view of the court in the Brule case was expressed as follows:

> If it is a contempt to bribe a witness in front of the courthouse door, is it not a contempt to attempt to do the same thing on the street opposite the court building, or four blocks away. Is not the result the same? What difference does it make whether the attempt was made on the ground owned by the United States, or at the residence of the witness in the same town, four blocks, or about one-quarter of a mile, away from the court building? In one case the misbehavior would be construed to be in the presence of the court, and in the other "so near thereto as to obstruct the administration of justice," and the statute, in clear language, is made to apply to both cases.[55]

The McLeod Case—

The next case, that of Ex parte McLeod,[56] decided in 1903, by the District Court of the Northern District of Alabama, arose out of the act of the defendant in threatening and assaulting a United States Commissioner, who had ordered that he be held for trial on a criminal charge. In its opinion, the court viewed the act of 1831 as intended only to take away the powers of the courts with reference to libels and criticism. The action complained of was held to be a contempt of court because it might tend to influence or intimidate the court in connection with its decision in subsequent cases. It is obvious, however, from a full consideration of the opinion in this case, that the court was merely attempting to find some formula which would allow it to punish such a gross offense as an assault upon a court official. The opinion dealt primarily with conduct directed against the judges, rather than against court officials, the two being joined by the statement of the court that a United States Commissioner was a judicial officer, and that "What is said as to the judge of the court applies with equal force to persons who aid in a judicial capacity in the administration of justice." With reference to the provision "so near thereto as to obstruct the administration of justice," the court said:

> In view of the evil intended to be suppressed, they mean not the place where the misbehavior is committed, but the power of the misbehavior to harm the administration of justice. If the force put in motion by the misbehavior, at whatever place it is committed, assails or threatens the authority and independence of the court, then the misbehavior is so near thereto as to be punishable under this section.[57]

---

[53] 131 U.S. 267.
[54] 131 U.S. 280.
[55] 71 Fed. 943, 948.
[56] 121 Fed. 130.
[57] 120 Fed. 130, 137.

On the authority of the Savin case, which had upheld the hallowed nature of the rooms devoted to the use of the courts, the opinion stated:

> If the inanimate things which are devoted to the use of justice are hallowed in the eyes of the law, at least when the court is in session, how much more so, in principle, must be the security against assaults, because of the discharge of duty, or the person of the officer who orders and controls the administration therein, no matter where he is.[58]

So liberally did Judge Jones construe the provisions of the act of 1831 in favor of the power of the courts, that he even expressed the opinion that this act was broader in some respects than that of 1789, which had "confined the contempt power of the court to contempts thereof in any case or hearing before the same.[59] It seems to the writer that the opinion in the McLeod case would have been better if the court had decided, since the contempt consisted of an attack upon a United States Commissioner, that the contempt had been committed in the presence of the court—*rather than as so near* as to obstruct the administration of justice, for widening the scope of the term "presence" would not have been as serious as stretching "near thereto".

The Carroll Case—

The next case, United States v. Carroll,[60] was decided in 1906, and involved an attempt to influence a juror. The opinion in this case brought nothing new to the subject, as it consisted for the most part of a discussion of the evidence in the case and of quotations from the cases already cited. Since the evidence of the attempt was not considered satisfactory, the accused was discharged. The only act sufficiently proved was an attempt to persuade another to influence a juror. Since the plot extended no further, it did not result in obstructing the administration of justice, and thus was not punishable as contempt.

The Kirk Case—

In 1911, another case, Kirk v. United States,[61] involved an attempt to influence jurors in the impartial discharge of their duties in a pending case. In this case the court wholly discarded any idea whatsoever as to physical proximity when it stated:

> It is obvious that any wilful attempt improperly to influence jurors in the impartial discharge of their duties in a pending case, whether by attempts to bribe or otherwise, no matter where it is committed, is sufficiently near to the presence of the court to tend to obstruct the administration of justice. It is not to be supposed that in enacting the statute Congress intended to deprive the federal courts of the power to deal summarily with persons who are attempting to corrupt jurors who have been called to decide pending cases, for without that power the courts would be practically helpless in the presence of an organized scheme, such as is shown by the evidence in this case, for the purpose of interfering with the administration of justice. There is every reason why the court should have the power to deal with such attempts at their very inception, so as to prevent the evil, and should not be confined to the remedy by indictment to punish such acts after the evil has been accomplished.[62]

---

[58] 120 Fed. 130, 141.
[59] 120 Fed. 130, 139-40.
[60] 147 Fed. 947
[61] 192 Fed. 273.
[62] 192 Fed. 273, 277.

The Huff Case—

In 1913, in the case of United States v. Huff,[63] Judge Grubb decided that it was a contempt of court to deliver improper letters concerning a pending case to a judge at his home. This contempt was held so near to the court as to obstruct the administration of justice, although it would seem that the case might better have been brought within the provision, "presence of the court", since the terms court and judge might have been considered synonymous in this instance. In this case the doctrine of obstructive effect was again accepted by the court in the following statement:

> The court, and the judge, as an arm of it, was still carefully protected by the act from all criticism that interfered with or obstructed the proper administration of justice by it.... Congress also recognized that there might be acts or misbehavior directly obstructive to the proper administration of justice, but which were not committed in the presence of the court, and it was to provide for this class that the second clause of the first subdivision was placed in the act. "So near the presence of the court as to obstruct the administration of justice" applies to all acts of misbehavior whose natural tendency and effect is to interfere with the administration of justice, wherever the acts may be committed. The test of the requisite nearness is made by Congress to depend upon the effect of the act upon the administration of justice. If obstructive of it in fact, it will be held to have been committed near enough to the presence of the court to come within the meaning of the act. The locality is important only as reflecting upon whether the misbehavior is or is not obstructive.[64]

The McCaully Case—

In McCaully v. United States,[65] a frequently cited case decided in the courts of the District of Columbia, the defendant had endeavored to influence a juror two days before the trial of the case. This attempt took place at the place of business of the juror, which was some distance from the court house. It was contended that this conduct was not punishable under the act of 1831, but the court refused to follow this construction, and adopted the obstructive effect doctrine in the following statements:[66]

> The question is not one of geography, or topography, or propinquity or remoteness, but one of direct influence upon the administration of justice. The administration of justice is equally obstructed wherever the act is done; and the place of the solicitation is absolutely of no consequence whatever. Whether the act was done in the courthouse, or a mile or a hundred miles away, the result is precisely the same; the disturbance to the court is precisely the same. The court is wherever the juror or witness is; and there is no question of locality in the case.... Every juror is a part of the court, wherever he is.... An attempt upon the integrity of the jury, or upon the integrity of any individual juror, is a direct attack upon the court; and the court is entitled to protect itself ... by way of the summary proceedings for contempt of court.

The Toledo Newspaper Case—

The same construction was adopted by Judge Killits in the notorious Toledo newspaper case.[67] The contemptuous acts in this case were numerous publications attacking the court and the management and creditors of the local street car company in connection with a suit then

---

[63] 206 Fed. 700.
[64] 206 Fed. 700, 704-5.
[65] 25 App. D. C. 849.
[66] 25 App. D.C. 849, 854.
[67] United States v. Toledo Newspaper Co. et al., 220 Fed. 458.

pending against officials of the city of Toledo. Whatever one may think about the sagacity or lack of sagacity shown by Judge Killits in instituting the contempt proceedings, his opinion is of particular interest because it is the only one which gives much consideration to the history of the act, and because it attacks the narrow construction of the act upon historical grounds. Whether one agrees with his conclusions or not, a consideration of his opinion is well worth the time.

Judge Killits, in attacking the views expressed by Justice Baldwin in the cases of Ex parte Poulson[68] and United States v. Holmes,[69] said:

> In understanding Justice Baldwin's views, it may be well to consider that he was a Pennsylvanian, from a state whose Legislature in 1809 had passed an act declaring that no newspaper comment, however injurious, concerning a pending case, should be construed into a contempt punishable by summary process. He says, in fact, in his opinion, without the slightest record to justify the assumption, that he believes Congress to have been influenced in the passage of the act of 1831 by the Pennsylvania statute.[70]

He likewise threw doubt upon the validity of Justice Baldwin's conclusions because the Supreme Court had overruled his opinion as to the construction to be given section two of the act. He also pointed out[71] that Chancellor Kent had characterized the act, as construed in the Poulson case, as unreasonable.[72]

Judge Killits cited a number of passages from the Peck impeachment trial as evidence of the purpose of the act not to limit drastically the powers of the judiciary; but he failed to cite the statement by Buchanan to the effect that, since the contempt power was based upon necessity, no publications could be considered as contempts. It may be pointed out that these statements were made with particular reference to the trial, and cannot be proved to have been the actual opinions of the Managers themselves.

Then came the most persuasive bit of Judge Killits' opinion:

> Mr. Buchanan was chairman of the House judiciary committee. It would seem that, if he were asking Congress to follow Pennsylvania's example in completely immunizing the press, he would have produced a measure with little or no ambiguity in that respect. The record shows Daniel Webster to have been actively interested in Peck's trial. He voted with the majority of the Senate for acquittal. It seems very clear, that as chairman of the Senate committee in charge of the bill, he would not have recommended a measure to be interpreted as going away beyond the position of Peck's prosecutors, nor would others of the majority have allowed it to pass unchallenged. Men notable in our history, in both houses, and who were from states whose courts then held, and still have, full common law powers respecting contempts, interested themselves by vote and speech in favor of Judge Peck. It is unreasonable to claim that they would have been even silent, if this act was intended to put the press out of reach of its provisions, much less to have abetted such a proposition.[73]

Judge Killits accepted the opinion which Judge Hammond had stated in the case of United States v. Anonymous to the effect that the act

---

[68] Fed. Cas. 11,350.
[69] Fed. Cas. 15,383.
[70] 220 Fed. 458, 475, it is probable that Justice Baldwin took judicial notice of the influence of the Pennsylvania act.
[71] 220 Fed. 458, 482.
[72] Kent's *Commentaries*, p. 300.
[73] 220 Fed. 458, 481.

of 1831 was a curtailment, not an abolition of the power to punish as contempts publications out of court:

> It is generally understood that the object of the Statute ... was to enlarge the liberty of criticism by the press and others by curtailing the power to punish adverse comments upon the courts, their officers and proceedings, as contempts which tend to impair respect for the tribunal, and thereby obstruct the administration of justice.[74]

Judge Killits' construction of the act of 1831 was upheld by the Circuit Court of Appeals,[75] and the case was then taken on appeal to the Supreme Court of the United States, which likewise confirmed the lower court.[76] The opinion in this case was written by Chief Justice White, and concurred in by Associate Justices McReynolds, Van Devanter, McKenna, and Pitney, with two Justices, Holmes and Brandeis, dissenting. The majority opinion is a most unsatisfactory one, and displays an amazing misinterpretation and distortion of historical fact.

The majority point of view, which completely nullifies the act, was expressed as follows:

> There can be no doubt that the provision conferred no power not already granted and imposed no limitation not already existing. In other words, it served but to plainly mark the boundaries of the existing authority resulting from and controlled by the grants which the Constitution made and the limitations it imposed.... The provision, therefore, conformably to the whole history of the country, not minimizing the constitutional limitations nor restricting or qualifying the powers granted, by necessary implication recognized and sanctioned the existence of the right of self-preservation; that is, the power to restrain acts tending to obstruct and prevent the untrammeled and unprejudiced exercise of the judicial power given, by summarily treating such acts as a contempt and punishing them accordingly. The test, therefore, is the character of the act done and its direct tendency to prevent and obstruct the discharge of judicial duty.[77]

The majority then declared that the act need not actually obstruct the administration of justice, but that the mere tendency to do so was sufficient to bring the conduct within the act:

> The wrong depends upon the tendency of the acts to accomplish this result without reference to the consideration of how far they may have been without influence in a particular case.[78]

According to the majority opinion, Congress evidently had no intent when it took the time and trouble to put this bill through in the last hectic days of the session, since "the provision conferred no power not already granted and imposed no limitations not already existing." This would signify that Congress had intended merely to restate the law of contempt, which hardly seems possible in view of the vagueness of the terminology employed. If one may judge from the decisions in the lower federal courts, there was great doubt as to the construction and operation of the act; yet Chief Justice White found none. In the light of the controversy over the meaning of the act, it is also surprising that the majority of the court could declare that the act "served but to

---

[74] 21 Fed. 761, 768.
[75] Toledo Newspaper Co. v. United States, 288 Fed. 986.
[76] Toledo Newspaper Co. v. United States, 247 U.S. 402.
[77] 247 U.S. 402, 418-19.
[78] 247 U.S. 402, 421.

plainly mark the boundaries of the existing authority." The extension of the term "obstruct the administration of justice" to make it mean "tendency to obstruct the administration of justice" would seem to give to the judiciary all the power which they ever possessed at common law, for any action having the tendency to react unfavorably upon the courts could come within this terminology. The effect of this decision has been as completely to erase the act from the statute books as though it had been repealed by Congress.

One other unsatisfactory statement was made in the majority opinion in this case. What does the statement, "the existing authority resulting from and controlled by the grants which the Constitution made and the limitations which it imposed," mean in connection with the contempt powers of the courts? The court also spoke of constitutional limitations in connection with the act of 1831. Did these statements mean that Congress could not limit the exercise of the contempt powers by the courts; since these powers were derived by the court from the Constitution? Likewise, what limitations upon the contempt power did the Constitution impose? The writer does not profess to know, but it has generally been assumed that Congress, because of our constitutional history and set-up, had the power to regulate and limit the exercise of the contempt power in the inferior federal courts. Two Supreme Court decisions, one before the Toledo newspaper case,[79] the other after,[80] have upheld the power of Congress in this connection.

All of the justices of the Supreme Court did not, however, concur in the unsatisfactory opinion rendered by Chief Justice White. Mr. Justice Holmes wrote a dissenting opinion [81] in which Mr. Justice Brandeis concurred, and which, in the view of the writer, is much the abler of the two opinions. The dissenting opinion stated:

> When it is considered how contrary it is to our practice and ways of thinking for the same person to be accuser and sole judge in a matter, which, if he be sensitive, may involve strong personal feeling, I should expect the power to be limited by the necessities of the case to insure order and decorum in their presence. And when the words of the statute are read it seems to me that the limit is too plain to be construed away. To my mind they point and point only to the present protection of the court from actual interference, and not to postponed retribution for lack of respect for its dignity—not to moving to vindicate its independence after enduring the newspaper's attacks for nearly six months, as the court did in this case. Without involving the rule of strict construction I think that so near as to obstruct means so near as actually to obstruct—and not merely near enough to threaten a possible obstruction. So near as to refers to an accomplished fact; and the word misbehavior strengthens the construction I adopt. Misbehavior means something more than adverse comment or disrespect.
>
> I think that no case for summary proceedings is made out if, after the event, publications are called to the attention of the judge that might have led to an obstruction, although they did not.... But a judge of the United States is expected to be a man of ordinary firmness of character, and I find it impossible to believe that such a judge could have found in anything that was printed even a tendency to prevent his performing his sworn duty. I am not considering whether there was a technical contempt at common law but whether what was done falls within the words of an act intended and admitted to limit the power of the courts.[82]

---

[79] Ex parte Robinson, 19 Wallace (U.S.) 505.
[80] Michaelson v. United States, 266, U.S. 42.
[81] The dissent is to be found in 247 U.S., pp. 422-426.
[82] 247 U.S. 422-426.

Mr. Justice Holmes then proceeded to comment upon the time which had elapsed between the publication of the articles complained of and their punishment as contempts, and upon the statement by the judge that he "had suffered attacks from the newspaper for six months before moving to vindicate his authority":

> It appears to me that this statement is enough to show that there was no emergency, that there was nothing that warranted a finding that the administration of justice was obstructed, or a resort to this summary proceeding.... When there is no need for immediate action contempts are like any other breach of law and should be dealt with as the law deals with other illegal acts.[83]

This opinion is certainly much more persuasive than that of the majority of the court. In the first place, Mr. Justice Holmes admits that the act of 1831 was intended to limit the contempt powers of the courts, and then proceeds to hold that it actually does limit them. He likewise holds that the phrase "obstruct the administration of justice" means something more than a mere tendency to obstruct the administration of justice. The dissenting opinion also did not contain the vague language of the majority opinion or the vague statement as to the authority of the courts under constitutional grants.

The Craig Case—

The Supreme Court was later presented with an opportunity to change the decision in Toledo Newspaper Company v. United States, when the Craig case [84] came before it. The Craig case, which also resulted from publications affecting the court, was likewise a *cause celebre,* involving a heated public utilities fight.

Craig, Comptroller of the City of New York, had attacked the impartiality of Judge Mayer, Federal District Judge of the Southern District of New York, for his actions with respect to the operation in receivership of the Brooklyn Rapid Transit Company. As a consequence, he was tried and convicted, and his punishment assessed at six months in jail.[85] Instead of appealing the case, Craig applied to Judge Manton, a Federal Circuit Judge, for a writ of habeas corpus, which was granted on the ground that he was illegally imprisoned, in view of the act of 1831.[86] Nevertheless, Hecht, United States Marshal, refused to release Craig because of the commitment order by Judge Mayer. Craig sued Hecht for his release in the Circuit Court of Appeals, which upheld the marshal by a vote of two to one upon the ground that Judge Manton had not possessed the authority to order his release, and that the proper procedure was by way of appeal.[87] The case was then taken to the Supreme Court, which also decided the case on the same technical ground, and thus did not pass upon the merits of the case.

In this case Mr. Justice Holmes wrote a dissenting opinion,[88] in which he was again joined by Mr. Justice Brandeis, and in which he took the point of view that, because of the provisions of the act of 1831, Judge

---

[83] 247 U.S. 402, 425.

[84] Craig v. Hecht, 263 U.S. 255.

[85] United States v. Craig, 266 Fed. 230.

[86] Craig v. Hecht, 274 Fed. 177.

[87] Craig v. Hecht, 282 Fed. 138.

[88] 263 U.S. 255, 280-2.

Mayer was without jurisdiction in the case, and that, therefore, a habeas corpus would lie. Commenting upon the act of 1831 and contempts by publication, he said:[89]

I think in the first place that there was no matter pending before the court in the sense that it must be to make this kind of contempt possible. It is not enough that somebody may hereafter move to have something done. There was nothing then awaiting decision when the petitioner's letter was published.

He likewise believed that the publications had not actually obstructed the administration of justice, pointing out that Judge Mayer would have been satisfied with an apology, and concluded that:[90]

Unless a judge while sitting can lay hold of any one who ventures to publish anything that tends to make him unpopular or to belittle him I cannot see what power Judge Mayer had to touch Mr. Craig.

In this case Chief Justice Taft wrote a separate concurring opinion,[91] in which he pointed out that publications were punishable under the act of 1831 if obstructive and drew a distinction between obstructive and defamatory publications. This would seem to be an attempt to limit the decision in the Toledo newspaper case. It seems not unlikely that, had the case been reviewed as to its merits, Taft might have been in accord with the views of the minority. Taft's much narrower construction of the act of 1831 was evidenced by his statement that

If the publication criticizes the judge or court after the matter which the criticism has to do has been finally adjudicated and the proceedings are ended so that the carrying out of the court's judgment cannot thereby be obstructed, the publication is not contempt, and can not be summarily punished by the court, however false, malicious or unjust it might have been.[92]

The Sinclair Case—

The next case before the Supreme Court in which the act of 1831 was interpreted was that of Sinclair et al. v. United States,[93] decided in 1929. This case attracted wide interest because it was an outgrowth of the Teapot Dome oil scandal. Sinclair had been prosecuted in the Supreme Court of the District of Columbia for a contempt of the Senate, as a result of his refusal to testify before a Senate investigating committee. The contempt of court charge was caused by his employment of detectives to shadow members of the trial jury, and as a result Sinclair was sentenced to serve sixty days in jail. On appeal to the Supreme Court, the conviction for contempt was upheld, upon the authority of the Toledo Newspaper Company case to the effect that the act of 1831 "granted no power not already possessed and imposed no limitation not already existing." Curiously enough, there were no dissents in this case, although this same construction in the two earlier decisions had found Justices Holmes and Brandeis vigorously dissenting.

---

[89] 263 U.S. 255, 281.
[90] 263 U.S. 255, 282.
[91] 263 U.S. 255, 278-80.
[92] 263 U.S. 255, 279.
[93] 279 U.S. 74.

The Sanders Case—

Thus, by its construction of the act of 1831 in these cases, the Supreme Court has written the act off the statute books just as effectively as this could be accomplished by the repeal of the act by Congress. No better example of the truth of this statement is to be found than the action of the Federal District Court for the Southern District of Tennessee in the case of United States v. Sanders,[94] a contempt case involving disrespectful publications. The contempt conviction in this case grew out of a dispute between labor and the Illinois Central Railway, and the issuance of an injunction by the courts against interference by labor leaders. One Cohen, the editor of a labor paper in Memphis, violated the injunction by terming strike breakers dirty scabs and industrial scavengers, and was cited for contempt; whereupon Sanders, the editor of another Memphis newspaper, attacked the court in an article termed "The King Forbids," which characterized the injunctive power as that of a king and questioned the legality of summary procedure in contempt cases in view of constitutional guarantees of free speech and free press. Thereupon Sanders found himself in the same toils of the law from which he had attempted to extract Cohen, and was tried and punished severely for the contempt, upon the authority of the Toledo newspaper case.

In this case it would appear that the court practically took away from newspapers the right of criticism of official acts, and completely nullified any liberalizing construction of the act of 1831. A minute consideration of the publications by Sanders discloses that he did nothing more in his criticism than many very prominent writers have done; that is, he pointed out the arbitrary character of the contempt power and questioned the validity of the injunctive process, althought it must be admitted the criticism was rather sarcastic.

The Coll Case—

Attention should be again drawn to the Coll case,[95] in which the Circuit Court of Appeals of the First Circuit, in the face of authority and precedent, held that an attempt to bribe a witness out of court could not be summarily punished as contempt. Whether this decision will cause the adoption of a more liberal viewpoint is questionable, but at least the decision has demonstrated that there are still liberal judges on the Federal bench.

---

[94] 290 Fed. 428.

[95] Coll v. United States, 8 F. (2d) 20 (1925).

CHAPTER VIII

Contempt of Court and Executive Clemency

In the preceding chapter the constitutional authority of the legislature to interfere with the contempt jurisdiction of the courts was discussed at some length, and in this chapter the somewhat analagous question of the constitutional power of the executive to interfere in contempt cases by means of his exercise of the pardoning power will be considered.

Comparison of the Roles of Executive and Legislative Departments with Reference to the Contempt Power

In the majority of the judicial decisions in which the constitutional competence of the legislative department to regulate or limit the exercise of the contempt power by the judiciary has been denied, it was generally laid down that one branch of the government could not lawfully interfere with the powers of a coequal coordinate branch of the government.

At first glance it would seem to be apparent that this statement is broad enough to include interference with the judiciary by the executive as well as by the legislative department, and that the rule, therefore, would be the same, no matter which of the two departments attempted to interfere.

Such an assumption, however, to be valid, depends upon whether as a matter of fact the positions of the two departments with reference to the powers of the judiciary are so analagous as to demand that the same rule apply to both.

If one wishes to refute the view that the positions of these two departments are analagous, immediately a basic difference between the effect of the action of the legislature and the executive with reference to the contempt power presents itself. This fundamental difference is that, while the legislature might by statute so define the acts punishable as contempts of court as materially to limit the contempt jurisdiction, and thus deprive the courts in large measure of their protective weapon, all that the executive could do would be to relieve contemnors in individual cases from the penalties incurred by their contumacious acts. In other words, the effect of the legislative action would be prohibitive, while the effect of the action of the executive would merely be suspensive.

But is this actually a fundamental difference, if the power of the executive be carried to its logical extremes? If the executive has the power to issue his pardon in contempt cases, he would possess the legal power, if he say fit, to grant his pardon to the defendant in each and every criminal contempt case, and thus deprive the courts entirely of their powers [1]—a step much further than any legislature could go with respect to any court, whether legislative or constitutional. Such a condition of affairs was considered by Chief Justice Taft as practically beyond the realm of probability,[2] but it is quite conceivable that an executive backed by practically certain popular approval, might to all

[1] In re Nevitt, 117 Fed. 448, 456.

[2] Ex parte Grossman, 267 U.S. 86, 121.

intents and purposes nullify judicial action by adopting the policy of issuing his pardon to all offenders in certain of the out-of-door contempts, in which the power of the courts have always been questioned. By the adoption of such a policy the executive could accomplish indirectly by the use of the pardoning power what the legislature, supposedly the guardian of the public welfare, could not do directly by statute.

An examination of the cases in which the power of the executive has been upheld as contrasted with the cases denying the legislature the constitutional authority to interfere proves that on the whole the judiciary has simply evidenced a distrust of the legislative branch not shown for the executive, and that the effort has generally been made to portray the legislature at its worst and the executive at his best, minimizing particularly the possibility of abuse by the latter.

It would seem to the writer that, after considering both probabilities and possibilities, there is not such a fundamental dissimilarity between the position of the legislative and executive departments with reference to contempts of court, but that both should be classified together. Nevertheless the majority of the cases uphold the constitutional authority of the executive to pardon, while the majority also denounce as unconstitutional attempts by the legislature to limit or regulate their contempt jurisdiction.

Authorities upholding Executive Pardoning Power

In England the British sovereign has for centuries possessed the power to extend clemency by means of the pardoning power to those convicted of criminal contempts;[3] but he was without authority to pardon in civil contempt cases, because private justice was principally concerned in this class of contempts, by reason of the legal maxim "*non potest rex gratiam facere cum injuria et damno aliorum*".[4]

In this country the President was given the power "to grant reprieves and pardons for offenses against the United States,"[5] and identical or very similar provisions are to be found in the constitutions of a majority of the states. The question whether these grants include the power to pardon contempts of court has puzzled jurists and writers on the subject, and there is a wide difference of opinion among them, some upholding and some denouncing the authority of the executive. Practically the only rule upon which all are agreed is that the American executive may not pardon civil contempts,[6] although, as some actions may be punished either as civil or criminal contempts,[7] the affect of the classification may be to defeat the executive pardon.[8]

The power of the executive has been upheld with respect to the President by the Supreme Court of the United States,[9] and with respect to

---

[3] Thomas of Chartham v. Benet of Stamford (1313), 24 Selden Society 185. A number of the English authorities are cited by Chief Justice Taft, Ex parte Grossman, supra 110.

[4] Blackstone, vol. 4, 398.

[5] Constitution, art. 2, sec. 21, cl. 1.

[6] Ex parte Grossman, supra; State v. Magee Publishing Company et al., 224 P. 1028 (N.M.).

[7] Bessette v. Conkey Co., 194 U.S. 324.

[8] As in State ex rel. Rodd v. Verage, 187 N.W. 830 (Wis.).

[9] Ex parte Grossman, supra.

state governors by the courts of appeal of the states of Mississippi,[10] Louisiana,[11] Tennessee,[12] New Mexico,[13] while the power has been recognized in a dicta statement in a Colorado decision.[14]

The first expressions of opinion upholding the pardoning power of the executive in contempt cases are to be found in the opinions of the Attorneys General of the United States. The first of these, known as Dixon's case,[15] was decided by Attorney General Gilpin in 1841, and it should be noticed that the petition for a pardon in this case was joined in by the judge who had punished the petitioner. The same result was afterwards reached by Attorney General Mason in Conger's case [16] in 1844, by Attorney General Crittenden in Rowan's case [17] in 1845, and by Attorney General Miller in 1890.[18] The power of the President was also upheld in unreported opinions by Attorney General Knox in the Mackenzie case, May 1, 1901, and Attorney General Daugherty in the widely publicized case involving Craig, Comptroller of the City of New York, December 3, 1923.[19]

It is not surprising that the verdicts of the Attorneys General all favored the executive, and as *ex parte* expressions they cannot be considered as weighty authority from a legalistic viewpoint.[20] Nevertheless they have been cited by the courts as supporting the pardoning power of the executive, and in the decisions in the first three state cases they seem to have had a great deal of influence, an influence out of all proportion to their weight, in establishing the line of decisions in favor of the power of the executive to pardon contempts of court.

In the lower Federal courts there are numerous dicta statements as to the power of the President which have not been entirely uniform, although several early cases, In re Mullee [21] and In re Mason [22] the court recognized that the method of relief from contempt convictions was by petition for presidential pardon, and in a number of cases the petition for pardon was joined in by the sentencing judge.[23] In more recent years there have been several cases holding to the contrary point of view.[24]

The question of constitutional authority of the President to pardon in contempt cases was finally settled in the executive's favor by the decision of the Supreme Court of the United States in the case of Ex parte Grossman,[25] rendered at the October term 1924. The petitioner, Grossman, had been adjudged guilty of contempt in violating a liquor

---

[10] Ex parte Hickey, 4 Smedes & M. 783.
[11] State ex rel. Van Orden v. Sauvinet, 24 La. Ann. 119.
[12] Sharp v. State ex rel. Cason, 49 S.W. 752.
[13] State v. Magee Publishing Company et al., 224 P. 1028.
[14] In the matter of Brown, 2 Col. 553.
[15] 3 Op. Atty. Gen. 622.
[16] 4 Op. Atty. Gen. 317.
[17] 4 Op. Atty. Gen. 458.
[18] 19 Op. Atty. Gen. 476.
[19] These two unwritten opinions are referred to by Chief Justice Taft in Ex parte Grossman, supra, p. 118.
[20] 2 Ruling Case Law 920.
[21] Federal Cases 9,911.
[22] 43 Fed. 510.
[23] It was set forth in the brief of counsel in the Grossman case that of the thirty pardons theretofore granted by the President, in only five instances had the pardon been issued without the approval of the sentencing judge.
[24] In re Nevitt, 117 Fed. 448; United States v. Grossman, 1 F. (2d) 9.
[25] 267 U.S. 87.

injunction issued by the Federal District Court for the Northern District of Illinois, and fined and sentenced to one year in jail. President Coolidge relieved Grossman of the prison sentence by pardon but the District Court refused to recognize the validity of the pardon and recommitted Grossman.[26] Grossman then took his case on an original petition for a writ of habeas corpus to the Supreme Court, which overruled the District Court and ordered that Grossman be released.

The opinion in the Grossman case was written by Chief Justice Taft, an ex-President, and the decision oddly enough was a unanimous one. The case was remarkable in that four briefs were submitted, one by the petitioner, one by special assistants to the Attorney General on behalf of the respondent, one by Attorney General Stone and Solicitor General James Beck as *amici curiae,* and another by two attorneys, Francis Curlee and Charles Hay, also as *amici curiae,* and even the briefs of the *amici curiae* differed as to the existence or non existence of an executive pardoning power in contempt cases.

Undoubtedly the decision in the Grossman case is the strongest authority in favor of the executive pardoning power in contempt cases, not only because of the high caliber of the membership of the court, but also because it is one of the few decisions upon this controversial question in which the opinion has not been weakened by the presence of a dissenting opinion.

The Hickey Case—

The first state case upholding the executive pardoning power in a contempt case was that of Ex parte Hickey,[27] decided in 1845 by the Supreme Court of the State of Mississippi. After carefully considering the opinion in this case, however, some question may be raised as to whether or not it can be or should be considered as authoritative, and this question is of prime importance, as this case is the foundation of all the other earlier cases which established the authority of the executive.

By far the greater portion of the opinion is devoted to the consideration of whether a publication out of court may lawfully be punished in summary fashion as a contempt, and the decision was reached that, in view of the guarantees of free speech and free press contained in the constitution of the state of Mississippi, such an act cannot be considered as other than a libel on the judge and cannot be punished as a contempt. As Judge Ryan has pointed out in his able dissenting opinion in the case of State v. Magee Publishing Co. et al.[28-29] The decision of the court that the defendant was unlawfully imprisoned, automatically entitled the petitioner, Hickey, to his freedom. The opinion as to the power of the governor was, therefore, unnecessary to the decision in the case, and may in consequence be considered as obiter.

The authoritativeness of the case may be challenged from another point of view, that is, upon the decision of the court in the main question presented by the case. In its opinion the court reached the conclusions that contempts by publication were unknown to the common law; that the power of the courts to punish publications as contempt was a usurpa-

---

[26] United States v. Grossman, supra.
[27] 4 Smedes & M. 783.
[28-29] 224 P. 1028, 1037 (N.M.).

tion; and that the guarantees of the Mississippi constitution with respect to freedom of speech and press forbade the punishment of publications as contempts. Whether or not the court was correct in these conclusions is not here considered but it is certainly true that none of these positions would today be accepted as valid by the courts of other jurisdictions. The opinion in the Hickey case is thus in the queer position of having its actual decision repudiated, while its *obiter* statement has been accepted as authoritative, for the Hickey case has frequently been cited as authority for the power of the executive to pardon contempts of court by judges who would literally have thrown up their hands in righteous horror at the heresies of the actual decision in the case.

It should be pointed out that the ruling of the court "can be rested upon the peculiar language of the constitution of that state upon the subject. It authorizes the governor to grant pardons and remit fines in all criminal and penal cases except treason and impeachment." [30]

The Sauvinet Case—

The Hickey case was accepted as controlling the decision of the Court of Appeals of the State of Louisiana in the case of State ex rel. Van Orden v. Sauvinet,[31] decided in the year 1872. The authoritativeness of this case is also open to grave question for its facile acceptance, without scrutiny, of the decision in the Hickey case, but it may also be impeached upon its own account. Judge Ryan has pointed out that the court failed utterly to consider the fundamental question of whether the contempt was a civil or a criminal one, and showed that the facts in the case offered abundant evidence to prove that the contempt was actually a civil one, which the executive is without power to pardon.[32] The contempt proceedings in this case were the outgrowth of the refusal to comply with an order of court, issued in a civil suit, for the sequestration of certain property.

The attitude adopted by the court in this case may well be the subject of challenge. It is very apparent after reading carefully the opinion in the case that the court can hardly be said to have approached the subject with an open mind, for it adhered to the strict rule of pleading that the burden of proof of invalidity of the executive action was upon the one who alleged its invalidity, and assumed that the power of the governor must be disproved rather than proved. This approach is hardly acceptable in a doubtful constitutional question. Upon the same point the Supreme Court of Wisconsin, in the case of State ex rel. Rodd v. Verage, asked:

> In view of the consequences which might result from an exercise of the power to pardon those punished for criminal contempt, should such power be conceded to exist in the absence of a clear intention on the part of the people to vest it in the Governor? [33]

The next decision, also in favor of the executive, is likewise a rather weak precedent, since the court gave no independent consideration to the matter, but contented itself with quoting the Hickey and Sauvinet

---

[30] Taylor v. Goodrich, 40 S.W. 515, 522 (Tex.).
[31] 24 La. Ann. 119.
[32] Dissenting opinion in State. v. Magee Publishing Company, supra 1038.
[33] 187 N.W. 880, 842 (Wis.).

decisions.[34] This was the case of Sharp v. State ex rel. Cason decided in the year 1899 by the Supreme Court of Tennessee.[35]

Rice Lardner in criticizing this case pointed out in an article in the Rocky Mountain Law Review that: [36]

> Its force is much diminished as it relies largely upon State v. Sauvinet and In re Hickey, which are not in themselves persuasive; upon opinions of the Attorneys General, which can have little weight since they are statements of officers of the executive department; and upon three decisions which are not in point.

The question of the executive pardoning power was passed upon, although not directly by the Supreme Court of the State of Colorado in 1874 in the case of In the matter of Brown,[37] and the competence of the executive recognized solely upon the Authority of Blackstone.

Thus by the end of the nineteenth century a number of decisions had recognized the constitutional authority of the American executive to pardon contempts of court, but no single case in that time can be pointed to as good and sufficient authority, and thus the matter rested for the next twenty-five years.

The Magee Case—

In the spring of 1924 the question was presented to the Supreme Court of the State of New Mexico in the case of State v. Magee Publishing Co. et al.,[38] and was decided by a vote of two to one in favor of the executive power.[39] The case was the outgrowth of the "crusades" of Carl Magee, the reforming editor of the *New Mexico State Tribune*, against the corruption of the Fall Ring in the politics of the state. As a result of one of his editorials Magee was indicted and convicted of criminal libel. While the libel proceedings were pending Magee published a number of articles in his paper concerning certain phases of the libel action, in which he severely criticized the presiding judge of the district. As a result of these publications Magee was sentenced to one year in jail and his paper was fined $4,000.00. The governor of the state pardoned both of the defendants, but the power of the executive to pardon was questioned by the officers who held Magee in custody. The Supreme Court considered the constitutional question very thoroughly for itself—a quality conspicuous by its absence in the earlier state cases upon the subject.

Shortly thereafter practically the same question was again raised in the case of Ex parte Magee,[40] involving the same defendant. In this case the opinion of the court was unanimous, as Judge Ryan was no longer on the bench, in holding that the executive power extended to direct as well as indirect contempts.

In attacking the authoritativeness of the Magee cases it may be pointed out that the decision in the first case was by a vote of two to one, and that the second decision was in all probability a mere application of the

---

[34] Rice Lardner, 2 Rocky Mountain Law Review, The Executive Pardon in Contempt of Court, 137, 151 note.
[35] 49 S.W. 752.
[36] Supra, note 34.
[37] 2 Col. 553.
[38] 244 P. 1028.
[39] There was a very able dissenting opinion by Judge Ryan, pp. 1035-1047.
[40] 242 P. 332.

decision in the earlier case, under the customary rule of *stare decisis*. Likewise there is little doubt but that the result reached was due in considerable degree to the fact that there was strong public sentiment in favor of Magee and his "crusading," and to the realization that in no other way could Magee escape punishment, for in both instances his actions were clearly contemptuous.

The pardoning power of the executive has also been upheld in extra-legal utterances by Chief Justice Taft in the lectures which he delivered some years before the decision in the Grossman case to the students of Columbia University,[41] and by a large number of authors of text books upon criminal law and encyclopedias.[42] It is very doubtful, however, whether any real weight may be given to these statements, for, as a rule, they are merely citations of cases without independent consideration of the problem presented. Only one article [43] defending the presidential pardoning power in this class of offenses is to be found in the law reviews, although this may be explained by the psychological factor that such articles are generally written to attack accepted views rather than to defend the apparent weight of judicial authority.

Authorities Denouncing Executive Pardoning Power

The first case to take direct issue with the accepted point of view, that of upholding the executive power, was the decision of the Civil Court of Appeals of Texas in the case of Taylor v. Goodrich,[44] decided in 1897, more than fifty years after the Hickey case. The question in this case was whether a judge was liable in damages for false imprisonment in refusing to recognize a pardon issued by the governor to one convicted and imprisoned for contempt, and the validity of the pardon was a direct issue in the decision. The court refused to grant damages, holding that the pardon was invalid.

The same court subsequently reaffirmed its decision in this case in its opinion in the later case of Ex parte Green,[45] in 1927.

Another decision which denies the executive the power to pardon contempts of court is the decision of the District Court for the Northern District of Illinois in the case of United States v. Grossman.[46] As the decision was afterwards overruled by the Supreme Court of the United States,[47] it cannot be viewed as authoritative, but it is entitled to some consideration from a purely academic point of view.

The only other decision against the accepted point of view, and the most recent decision upon the question, is the notorious Shumaker case,[48] decided by the Supreme Court of the state of Indiana in 1928. As a great deal of criticism has been directed against the court for the manner

---

[41] Published as Our Chief Magistrate and His Powers, pp. 120-121.

[42] 20 Ruling Case Law, sec. 537; 13 Corpus Juris, Contempt, sec. 154; McLain on Criminal Law, vol. 1, p. 11; Bishop, Criminal Law, vol. 1, p. 555; Rapalje on Contempt, p. 235; Bouvier, Law Dictionary, vol. 3, p. 2448; Willoughby on the Constitution of the United States (1912 ed.), p. 528.

[43] W. A. Shumaker, Power of the President to Pardon for Contempt of Court, 27 Law Notes, 185.

[44] 40 S.W. 515.

[45] 295 S.W. 910.

[46] United States. v. Grossman, 1 F. (2d) 941.

[47] Ex parte Grossman, supra.

[48] State v. Shumaker, 164 N.E. 408 (Ind.).

in which it has handled the whole contempt proceedings against Shumaker it seems best to give a brief review of the facts.

Shumaker had published several articles in the Anti-Saloon League paper in which he criticized the liberality which the Supreme Court had shown to bootleggers, and in which he urged that members of the League work for the election of dry judges. Although the defendant disclaimed any intent to commit contempt and although some doubt existed as to whether the publications should be treated as contempt the defendant was severely punished.[49] When the governor interferred in order to save Shumaker from serving time, upon provision that he pay the fine, the court refused to recognize the validity of the executive action, by the narrow margin of three to two.[50] There was a strong dissenting opinion in this case which was based principally upon the decision of the Supreme Court of the United States in the Grossman case.

Unfortunately the decision by three members of the court that the executive action was invalid looks too much as if the decision were the result of a desire to make sure that the insults of Shumaker would not go unpunished. From a consideration of the influence of the facts of the case upon the decision it appears fairly evident that the pardon might have been upheld if the contempt had been of any other court of the state.

The power of the executive was discussed in 1922 by the Supreme Court of the state of Wisconsin in the case of State ex rel. Rodd v. Verage,[51] and was severely questioned in remarks which were clearly *obiter dicta.* Although the remarks were dicta the case has frequently been cited as supporting the contention that the executive cannot pardon in contempt cases. As there has been no later decision in Wisconsin upon this question, it seems that the power of the executive in that state is open to grave doubt. It has been pointed out, however, that this decision antedates the Grossman and Magee decisions, and that in view of these well reasoned opinions the court might be induced to change the views which it expressed in the Verage case if the issue were to be again submitted to the court.

The question was also considered in *obiter* remarks by the Circuit Court of Appeals of the Eighth Judicial Circuit in 1902, in the case of In re Nevitt,[52] and the power of the executive denied. This case has also been frequently cited in opposition to the executive pardoning power in contempts.

The power of the executive has been vigorously assailed by a number of writers in the legal periodicals, the earliest of which was published in 1909.[53] The question has since been considered by Wilbur Larremore in an article in the Harvard Law Review,[54] by Paul Butler in the Notre Dame Lawyer,[55] and by Rice Lardner, in a very excellent article in the Rocky Mountain Law Review.[56]

---

[49] State v. Shumaker, 163 N.E. 272 (Ind.).
[50] Martin, C. J., and Gemmill, J., dissented.
[51] 187 N.W. 830 (Wis.).
[52] 117 Fed. 448.
[53] 12 Law Notes 185, Thomas Johnston.
[54] Constitutional Regulation of Contempt of Court, 13 Harvard Law Review, 615, 620 et seq.
[55] Contempt and the Executive Power to Pardon, vol. 4, pp. 443, 548.
[56] Vol. 2, p. 137.

Basic Differences between Authorities

An analysis of the divergent opinions expressed by judges and writers as to the existence or non-existence of the authority of the executive to pardon contempts of court shows that the final determination of the question is in the main the result of their views with reference to two underlying propositions; namely, the character of the American constitutional system, and the nature of contempts of court. Thus the opinions which uphold the constitutional authority of the executive are based partly upon the belief that the powers of the American executive are very similar to those of the British King; and partly upon the belief that contempts of court are of such a criminal character as to be classified, for the purposes of the pardoning power, with other criminal offenses punishable only after indictment and trial by jury. On the other hand the opinions which deny the constitutional authority of the executive to interfere in contempt cases by an exercise of the pardoning power are based in part upon the contrary view that our tripartite system is peculiarly American; and in part upon the conviction that contempts of court cannot be classified with other criminal acts because of procedural differences.

To this writer the latter consideration—whether or not contempts of court should be classified for certain purposes with other criminal offenses is the more important consideration, for the answer to this question will be determined by choice of two courses, one by a process of mechanical reasoning, the other as a result of the adoption of a more realistic approach to the problem presented. The realistic approach seems to offer some proof that the fundamental cause for the differences in reasoning and in results is the underlying psychological attitudes with which each individual approaches the problem, for the choice of reasoning and of decision is determined largely upon the preconceived notions of liberalism or conservatism which each person consciously or unconsciously possesses with respect to the contempt power.

The writer will next consider the views of various writers as to the nature of the American governments, state and national, taking up first the historical or conventional method of approaching the problem.

The Historical Approach

In essence the historical or conventional approach to the question of the constitutional authority of the American executive to pardon in contempt cases consists mainly in the citation of English authorities as to the power of the British sovereign, upon the assumption that the authority of the American executive is substantially the same as that of his counterpart in the English governmental system.

The historical approach, although common to all of the opinions which uphold the power of the executive, is well illustrated by the reasoning in the opinion of Chief Justice Taft in the case of Ex parte Grossman. Taft began with the premise that:

> The language of the Constitution cannot be interpreted safely except by reference to the common law and to British institutions as they were when the instrument was framed and adopted.[57]

---

[57] 267 U.S. 87, 108.

He then cited with approval two quotations to this effect from earlier opinions by the Supreme Court, involving questions pertaining to the pardoning power of the executive. The first of these was the opinion of Chief Justice Marshall in the case of United States v. Wilson:

As this power has been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance, we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it.[58]

The second of these was made by Mr. Justice Wayne in the case of Ex parte Wells:[59]

At the time of the adoption of the Constitution, American statesmen were conversant with the laws of England and familiar with the prerogatives of the Crown. Hence, when the words to grant pardons were used in the Constitution they conveyed to the mind the authority exercised by the English Crown, or by its representatives in the colonies.[60]

Taft next discussed the power of the British sovereign:

The King of England, before our Revolution, in the exercise of his prerogative, had always exercised the power to pardon for contempt of court just as he did ordinary crimes and misdemeanors, and as he has done to the present day. In the mind of the common-law lawyer of the eighteenth century the word "pardon" included within its scope the ending by the King's grace of the punishment of such derelictions . . . (citing a number of early British decisions).[61]

Taft then turned to a consideration of the history of the pardon provision of the Constitution in the Constitutional Convention, and demonstrated that no words of limitation were there suggested, other than in the case of impeachments, and concluded, therefore, that:

It cannot be supposed that the . . . Convention . . . intended *sub silentio* to narrow the scope of a pardon from one at common law or to confer any different power in this regard on our Executive from that which the members of the Convention had seen exercised before the Revolution.[62]

Taft next vigorously assailed the idea that there is any essential difference between the pardoning powers of the American President and the British King:

Nor is there any substance in the contention that there is any substantial difference in this matter between the executive power of pardon in our government and the King's prerogative. The courts of Great Britain were called the King's Courts, as indeed they were; but for years before our Constitution they were as independent of the King's interference as they are today. The extent of the King's pardon was clearly circumscribed by law and the British Constitution. . . . The framers of our Constitution had in mind no necessity for curtailing this feature of the King's prerogative in transplanting it into the American governmental structures. . . .[63]

---

[58] 7 Peters (U.S.) 150, 160.
[59] 18 Howard (U.S.) 307, 311.
[60] Taft's action in citing the views of Marshall and Wayne in these two cases has been criticized because they concerned only the incidentals of a pardon and did not contemplate the subject here at issue, the scope of the pardoning power itself. Rice Lardner, 2 Rocky Mountain Law Review, 137, 138.
[61] 267 U.S. 87, 110.
[62] Ibid, 113.
[63] Ibid, 113.

Since the politico-philosophical approach is largely an attack upon the historical approach, the latter will not here be attacked except to point out that such a strict construction of American law along the lines of English authority has been severely criticized.

As to the future possibilities of the historical approach a writer who attacks this approach wrote:

> When one considers that at the present time the courts are placing less weight and emphasis upon the historical approach in judicial decisions, it is perhaps not unwise to hazard the opinion that the tendency of succeeding state decisions will be to discredit it. [Ex parte Grossman.] [64]

The Politico-Philosophical Approach

This is the name which the writer has chosen to give to the approach which, instead of adopting an analogous English-American standard in constitutional questions, views the American tripartite republican systems as a distinctly different creation than the English monarchy of 1775, and which denies, as a violation of the doctrine of the separation of powers the constitutional authority of the executive to pardon contempts.

This approach to the problem is well represented in an article by Rice Lardner,[65] who quoted the dissenting opinion of Mr. Justice McLean—the only surviving member of the judges who had decided the case of United States v. Wilson [66] . . . in the case of Ex parte Wells, to the effect that:

> The executive office in England and that of this country is so widely different, that doubt may be entertained whether it would be safe for a Republican Chief Magistrate, who is a creature of the laws, to be influenced by the exercise of any leading power of the British Sovereign.[67]

The same opinion was held by one of the ablest of American legal scholars, Judge Story, who wrote:

> The whole structure of our government is so entirely different, and the elements of which it is composed are so dissimilar from that of England, that no argument can be drawn from the practice of the latter, to assist us in a just arrangement of the executive authority.[68]

The idea of a close resemblance between the American and British executives was also attacked by Wilbur Larremore:

> If there was any one English feature which emphatically the American people did not intend to take over in its entirety, it was that of the executive head of the state. . . . The American executive was a new creation, not a similar institution, bodily adopted.[69]

Most of these authorities also consider of much importance the origin of the pardoning power in contempts, a matter given but little consideration by Taft and the other members of the Supreme Court in the

---

[64] Executive Pardon for Contempt of Court, 2 Rocky Mountain Law Review, 137, 151.
[65] Ibid.
[66] 7 Peters (U.S.) 150.
[67] 18 Howard (U.S.) 307.
[68] Story on the Constitution, p. 346.
[69] Constitutional Regulation of the Contempt Power, 13 Harvard Law Review, 615, 622.

Grossman case. They generally point out that the British King possessed this power because he was, in point of law, sovereign, and had been, in fact, the head of the judicial system; that the power was a judicial, not an executive one; and that the British sovereign possessed this power because all contempts were treated as contempts of the king himself, who could forgive the contempt in the same manner as any individual could forgive an injury to himself.

This point of view was adopted by the Supreme Court of the State of Wisconsin in the case of State ex rel. Rodd v. Verage, where it was said:

> It is quite appropriate that the king should exercise the power of pardon in such cases, because in the early history of England the king was the repository of all sovereign power. He was the government. He established his own courts, and at times presided over them dispensing justice in person. Formerly all writs and processes of the court were issued under the king's seal, and contempt of the king's court was therefore an affront to the king himself. He being the repository of all sovereign power, it followed as a logical consequence that he might forgive all offenses of a public nature, including offenses to his process, his seal, his courts.... But here we have a different idea of sovereignty. No one person possesses all sovereign power, and it is quite a different matter for a governor to forgive a contempt of court than for the king to exercise such a prerogative.[70]

The matter is discussed at some length by Rice Lardner who vigorously attacks the alleged similarity of the American and English governmental heads:[71]

> The English executive, the king, with the advent of the Normans and the abolition of the power of the Witenagemot to elect their rulers, ceased to be in legal theory and in fact the mere titular executives of a sovereign people, but became the sovereign himself (6 Halsbury, Laws of England, pt. v, sec. 547, p. 373). The king was "the only supreme head of the realm in matters both spiritual and temporal, inferior to no man, dependent upon no man, and accountable in his proper person to none, save only to God."
>
> In 1787 the titular executive had sunk to the level in political power of a clever politician, who used the few real powers he retained to buy votes in Parliament. In contrast with this, the delegates to the American Constitutional Convention created an independent executive, receiving his authority from a sovereign people, and delegated by the Constitution the exercise of a bundle of sovereign powers, among them being the power to pardon. Considering, then, this significant difference in our political institutions and those of England, can we properly apply English theories of jurisprudence to a purely political question in the same manner that we would apply them to adjudication of tort, contract, or criminal action which effect solely social, moral or financial institutions? Would it not be better to say that we should apply English legal theories to political disputes only when our political theories on specific points coincides with those of England?... When the common law courts were established by Henry II, they were personal courts, just as the baronial courts were the personal courts of the local land owners. Their authority arose from their positions as agents of the king. Accordingly we find in the first pardon for contempt that the person was "in contempt of our lord the king and his court" and he was ordered to remain in "gaol at the king's will" (Thomas of Chartham v. Benet of Stamford, Eyre of Kent, 6 Edw. II, 24 Selden Society 185).
>
> The judges then being his personal representatives a contempt of them constituted an offense against him.... The contempt then was a personal affront upon the king. It was, therefore, but a natural conclusion of the courts that he might forgive such an act through the pardon.... His act in pardoning was itself a judicial act, whereby he functioned as a final court of appeal. From

---

[70] 187 N.W. 830, 841.
[71] 2 Rocky Mountain Law Review, 137, 138 et seq.

the above principles we can conclude that the pardoning power is not essentially an executive function, since the basis for the English King's power to pardon lies in his exercise of judicial powers, as the sovereign, and not because of his position as an executive (State v. Nichols, 26 Ark. 74)... "The executive stands, if anyone visibly does, in the place of the monarchs of other nations, and we forget that the monarch had the pardoning power, not because he is the chief executive, but because he was considered sovereign, while with us, the governor or president has but a delegated power and a limited sphere of action, which by no means implies that we must necessarily or naturally delegate along with the executive power, also the pardoning power." (Leiber, Civil Liberty and Self Government, vol. 2, p. 147.)

Likewise in the case of Taylor v. Goodrich [72] the Civil Court of Appeals of the State of Texas stated that:

The governor is not the representative of sovereignty, nor has he any supervisory control over the courts by virtue of his office.

And in the case of In re Nevitt the Federal Circuit Court of Appeals also stated:

The judicial power of the United States is not derived from the king, as it was in England, or from the president, but it was granted by the people by means of the Constitution, in its entirety... free from the control or supervision of the executive department of the government.[73]

These authorities proceed upon the point of view that in questions involving the relations between various branches of the government a cardinal consideration is that of the doctrine of the separation of powers. Thus in the Grossman case the lower court,[74] in considering the tripartite nature of the American governments, quoted the statement of James Madison that:

It is laid down in most of the Constitutions or Bills of Right in the Republics of America, it is to be found in the political writings of the celebrated civilians, and it is everywhere held as essential to the preservation of liberty that the three great departments of government be kept separate and distinct.[75]

These authorities then proceed to a consideration of the contempt power, in the light of the numerous opinions to the effect that the contempt power is absolutely necessary to the existence of the courts and that the power to protect themselves and their proceedings is inherent in all courts. This point of view is well illustrated by the opinion of the Supreme Court in the Gompers case that:

The power of courts to punish for contempt is a necessary and integral part of the independence of the judiciary and is absolutely essential to the performance of the duties imposed upon them by law. Without it they are mere boards of arbitration, whose judgments and decrees would be only advisory.[76]

In the cases in which the power of the executive to pardon contempts has been denied, the courts have generally cited the statement of the learned American jurist, Judge Story, as to the legislative contempt power and its freedom from executive interference. These cases have taken the view that his words of wisdom may be applied to contempts of court as well as to contempts of the legislature:

---

[72] 40 S.W. 515, 523.
[73] 117 Fed. 448, 457.
[74] United States v. Grossman, 1 F. (2d) 941.
[75] Ibid, 943.
[76] Gompers v. Bucks Stove and Range Co., 221 U.S. 418, 450.

It would seem to result from the principle on which the power of each branch of the legislature to punish for contempt is founded, that the executive cannot interpose between them and the offender. The main object is to secure a purity, independence and ability of the legislature adequate to the discharge of their duties. If they can be overawed by force, or corrupted by largesses, or interrupted in their proceedings by violence, without the means of self protection, it is obvious that they will soon be found incapable of legislating with wisdom or independence. If the executive should possess the power of pardoning any such offender, they would be wholly dependent upon his good will and pleasure for the exercise of their own powers. Thus, in effect, the rights of the people entrusted to them would be placed in perpetual jeopardy. The Constitution is silent in respect to the right of granting pardons in such cases as it is in respect to the jurisdiction to punish for contempts. The latter arises by implication; and to make it effectual, the former is excluded by implication.[77]

As to the question of whether or not the exercise of the pardoning power by the executive would interfere with the power of the court to enforce its mandates, a writer upon the subject said this of Taft's decision:

He overlooked the fact that the pardon issued in the Grossman case itself constituted an abuse of the pardon power for it prevented the closing by injunction of an Illinois bar, operating in defiance of the Volstead Act.[78]

Speaking of this problem, Professor W. W. Willoughby, in his elaborate three volume work on the United States Constitution, said in part:

Arguing from the general principle of the independence of the three departments of government it would seem that the question as to the power of the President to pardon persons adjudged by one of the Federal courts to be in contempt should be answered in the negative; for clearly to give this power to the executive is to place in his hands a weapon with which he may completely nullify the court's power to enforce its decrees.[79]

A careful analysis of this approach to the problem would seem to indicate that the result achieved is based for the most part upon two assumptions: the first, that constitutional checks and balances must be stated in the Constitution and cannot be made out merely by construction, the second, that the effect of the pardoning power in contempt cases would be to undermine the independence of the judiciary.

The first of these assumptions can not be very vigorously attacked, for its opponents can only offer in rebuttal their belief that the American constitutional system lays more stress upon the system of checks and balances than upon the doctrine of the separation of powers.

The second assumption however has met with a vigorous challenge by authorities upholding the executive power to pardon, upon the ground that the effect of the pardon is not to interfere with the independence or utility of the courts. This argument seeks to point out a fundamental difference beween the two kinds of contempts, civil and criminal, to show that the punishment of contemnors for past contempts is not a

---

[77] Story on the Constitution, vol. 2, sec. 1503, pp. 336-337. The same opinion was voiced by Attorney General Gilpin in Dixon's case, 3 Op. Atty. Gen. 623, on the authority of Rawle on the Constitution, and the power seems never to have been exercised by the President.

[78] Lardner, 2 Rocky Mountain Law Review, 137, 149.

[79] Willoughby on the Constitution of the United States, vol. 3, p. 1632.

matter of judicial concern, and that interference could only exist where the executive interferes with the court in case of coercive rather than punitive contempts.

This point of view was expressed by Taft several years before the Grossman decision when he lectured at Columbia University in 1915 upon the Presidency: [80]

There is a question whether the President's power of pardon extends to the case of one sentenced to imprisonment for contempt of a Federal court. It is objected that this power of contempt is used by the court to enforce its judgments, and that if the President could intervene and paralyze the instrument in the hands of the court to enforce its judgment, he would not be pardoning a crime but would be obstructing the court in its administration of justice. I think it possible to smooth out this difficulty by pointing out a distinction between the two ways in which a court exercises its power of contempt. Where a court is seeking to enforce a decree or a judgment against a contumacious party and puts him in prison for the purpose of compelling him to comply with the judgment or decree, then I do not think the President could pardon a man or relieve him from the effect of such an order because he would really be obstructing the cause of justice. But when the court is merely vindicating its own authority by punishing a man for a past contempt, and where an imprisonment is not a continuing duress for the purpose of compelling obedience, it seems to me that the punishment inflicted is for an offense against the United States, to wit, a defiance of its judicial authority, and therefore that it does not come within the range of the powers of pardon by the President.

Likewise in the Grossman decision Taft disagreed with the contention that the rule of constitutional construction should be that of the doctrine of the separation of powers, declaring that:

The Federal Constitution nowhere expressly declares that the three branches of the government shall be kept separate and independent.... Complete independence and separation between the three branches, however, are not attained, or intended as other provisions of the Constitution and the normal operation of government under it easily demonstrate (citing several instances of the operation of checks and balances in our constitutional system).... They show that the independence of each of the other is qualified and is so subject to exception as not to constitute a broadly positive injunction or a necessarily controlling rule of construction.[81]

In support of the belief that the judiciary should be free of executive interference by way of the pardoning power it has been pointed out that the judiciary is concededly the weakest of the three departments of government and the view expressed that the founding fathers would have been more apt to look upon the pardoning power as an interference with the judiciary, rather than simply as a check upon the judicial branch.[82]

The writer will next consider the character of contempts of court, taking up first the more realistic viewpoint, which upholds the constitutional authority of the executive:

Realistic Consideration of Contempts

It is an old saying that politics makes strange bed fellows, and the same thing might well be said with reference to the attainment of certain desired ends by means of the process of logical reasoning. Thus where

[80] Our Chief Magistrate and His Powers, p. 120.
[81] Ex parte Grossman, 267 U.S. 87, 119.
[82] Lardner, 2 Rocky Mountain Law Review, p. 137.

the desired end is the confirmation or denunciation of the constitutional authority of the pardoning power in contempt cases, we find a queer combination of contradictory attitudes, now liberal, now conservative, now narrow, now broad, now realistic, now unrealistic. A consideration of the reasoning employed by him who wishes to uphold the authority of the executive discloses that he adopts an unrealistic, conservative, narrow viewpoint upon the constitutional question of the relations between the various branches of government, while, with reference to the character of contempts the same individual is realistic, liberal and broad minded. Conversely the person who wishes to see the power of the executive denied takes a rather liberal, broad position with respect to the first question, unhampered by legal authority, and is very narrow and unrealistic with respect to the second consideration.

The realistic approach to the problem consists of viewing contempts of court as basically constituting criminal offenses, varying from those classified as crimes only in procedural differences, and in recognizing that, by reason of the arbitrary character of contempt proceedings, it is peculiarly desirable that a power of review be vested in the executive in order to prevent injustice in particular cases.

This view was expressed by Taft in the opinion in the case of Ex parte Grossman as follows: [83]

> Nothing in the ordinary meaning of the words "offenses against the United States" excludes criminal contempts. That which violates the dignity and authority of Federal courts . . . must be an offense against the United States.

Taft also cited several cases in which criminal guarantees and provisions had been held applicable to contempts, and continued: [84]

> These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech. So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure (3 Transactions of the Royal Historical Society, n.s., p. 147 (1885)), and that at least in England it seems that they still may be and preferably are tried in that way. . . . It has been pointed out in Schick v. United States, 195 U.S. 65, the term "offenses" is used in the Constitution in a more comprehensive sense than are the terms "crimes" and "criminal prosecutions."

To the same effect is the statement of W. A. Shumaker that: [85]

> A criminal contempt is not an offense against the judge. . . . It is an offense against the government exactly like any other crime.

In the case of State v. Magee Publishing Co. et al., the court said: [86]

> Criminal contempt is an offense arising from a contumacious act against the authority of the court and not one against the judge personally. In such an instance the judge merely represents the sovereignty of the realm of its judicial department of government. The offense is therefore one against the community when considered as a social entity—it is one against the state, and the state, being the offended party, has the power to extend grace or forgiveness. The power is exercised through another department of the government, namely, the executive.

---

[83] 267 U.S. 87, 115.
[84] 267 U.S. 87, 116.
[85] 27 Law Notes 185.
[86] 224 P. 1028, 1035.

In the Grossman case Chief Justice Taft proceeded to show the need for an executive power of clemency in contempt cases:

> Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy, it has always been thought essential in popular governments, as well as in monarchies, to vest in some other authority than the courts, power to ameliorate or avoid particular criminal judgments.[87]
>
> The power of a court to protect itself and its usefulness by punishing contemnors is of course necessary, but it is one exercised without the restraining influence of a jury and without many of the guarantees which the Bill of Rights offers to protect the individual against unjust convictions. Is it unreasonable to provide for the possibility that the personal element may sometimes enter into a summary judgment pronounced by a judge who thinks his authority is flouted or denied?
>
> May it not fairly be said that in order to avoid possible mistake, undue prejudice or needless severity, chance of pardon should exist at least as much in favor of a person convicted by a judge without a jury as in favor of one convicted in a jury trial.[88]

The necessity argument, as it was raised by the Court of Appeals of Louisiana in the Sauvinet case,[89] was bitterly denounced by the court in the case of Taylor v. Goodrich, however, in which it was said:[90]

> It is a novel argument that there exists a prerogative in another department of the government—not by virtue of express law, but by reason of the comprehension that the court will abuse their authority—to substitute its opinion for that of the courts, and to assume judicial functions, which do not belong to it.

It should be pointed out that the facts in the Grossman case supported Taft's view of the close analogy between criminal contempts and criminal offenses, for they plainly demonstrated that the contempt proceedings were actually for the punishment of an act made a criminal offense by law. The only contemptuous act alleged was the sale of liquor in violation of an injunction which could only have been issued because the sale was a violation of law.

The injunction in the Grossman case was not of the ordinary type, a proceeding brought by a private individual in order to protect invaded property rights, but an action prosecuted in equity by the government in order to enforce the provisions of the prohibition enforcement act. It was the policy of the government to use the injunctive powers of the courts of equity to enforce the criminal law in order to deprive the accused of the rights guaranteed him in a criminal trial, a trial which was far more likely to lead to the defendant's acquittal than the summary contempt proceeding. Therefore, if one considers the realities of the situation rather than the mere form of the procedure adopted, it becomes evident that the government elected to try Grossman on a criminal charge by the alternative method of contempt proceedings. This view of the matter may be borne out by reference to the Congressional sanction of this method of law enforcement,[91] and by the fact that

---

[87] Ex parte Grossman, 267 U.S. 87, 120.
[88] Ibid, 122.
[89] State ex rel. Van Orden v. Sauvinet, 24 La. Ann. 119.
[90] 40 S.W. 515, 523 (Tex.).
[91] 27 U.S.C.A. 34, 35, 38.

the sentence passed upon Grossman was much more severe than that assessed in the case of violations of other types of injunctions.

If one looks at the Grossman case as the attempt of the government to get a sure conviction against the defendant, there seems no good reason why the power of the President to pardon should depend upon whether the culprit was convicted for the illegal sale of liquor by ordinary criminal proceedings or by way of contempt. Furthermore if it is considered necessary that an executive pardoning power should exist in order to offer clemency to such as Grossman had they been convicted by a jury, it would seem much more desirable that such a dispensation be available to one convicted of the same offense by means of the contempt power, for there would seem to be much more possibility of injustice in the latter case than in the former. Any other assumption must be based upon a belief that a judge is entirely above conscious or unconscious passion or prejudice, and is incapable of error.

In the case of State ex rel Van Orden v. Sauvinet, the Court of Appeals of Louisiana also recognized the possibility of abuses of the contempt power which would call for a pardoning power in order to prevent injustice, saying: [92]

> We can scarcely think it compatible with the genius of liberal government and free institutions, that there should be no shield to protect an individual against a tyrannical exercise by a judge of his power to punish for contempt, and therefore conclude that, upon the principle of checks and balances upon which our American governments are founded, it was not intended by the framers of them that the pardoning power should not reach a party unduly deprived of his liberty, by, it might be, a hasty and petulant fiat of a judge.

It has at times been urged that such a power might be abused, and this possibility of abuse seems to be a bugaboo to the judges, who fear an extensive exercise of the pardoning power in contempt cases. The possibility of occasional abuse, since the President is probably not so well-informed with reference to the contempt as is the sentencing judge, was pointed out by Thomas Johnston, speaking of the action of President McKinley in pardoning Mackenzie, receiver of properties for the Federal District Court for Alaska: [93]

> Even so wise and well-balanced an Executive as President McKinley was induced to pardon the contempt of as unconscionable a scoundrel as ever looted a mine or committed murder, against the advice and protest of the judges of the Circuit Court who had punished him.

Taft rather scornfully attacked the probability of abuse of this power by the executive, when he wrote in the Grossman case:

> An abuse in pardoning contempts would certainly embarrass courts, but it is questionable how much more it would lessen their effectiveness than a wholesale pardon of other offenses. If we could conjure up in our minds a President willing to paralyze courts by pardoning all criminal contempts, why not a President ordering a general jail delivery? . . . If it be said that the President by successive pardons of constantly recurring contempts in particular litigation might deprive a court of power to enforce its orders in a recalcitrant neighborhood, it is enough to observe that such a course is so improbable as to furnish but little basis for argument. Exceptional cases like these, if to be imagined at all, would suggest a resort to impeachment rather than to a narrow and strained construction of the general powers of the President.[94]

---

[92] 24 La. Ann. 119, 121.
[93] 12 Law Notes 185.
[94] Ex parte Grossman, 267 U.S. 87, 121.

It may be contended that the possibility of abuse of power is no argument against the existence of that power itself.

It seems to this writer that whether one visualizes the possibility of abuse by the executive of the power to pardon, nevertheless, the utilitarian consideration that a power of review must exist in order to prevent injustice in particular cases is by far a more important proposition. It must be conceded that, because of the arbitrary character of summary procedure there will always be the opportunity for occasional abuses of this power by the courts, and that it is therefore necessary that some disinterested party have the power to suspend the penalties of the law in particular cases.

This is especially evident when one considers that it is extremely difficult for a contemnor to induce an appellate court to overrule a contempt conviction by a lower court, so long as it appears that the lower court had jurisdiction. A further consideration which illustrates the necessity for a pardoning power in the executive is that persons who may have been convicted and punished by the highest courts of a state in doubtful cases, are without any redress whatsoever.

Such a state of affairs is amply demonstrated by the facts of the recent Shumaker case,[95] in which it was held that the governor could not constitutionally pardon a contempt. Shumaker had been tried and convicted of contempt by the Supreme Court of the State of Indiana, upon charges growing out of certain publications attacking the court. Although there was some question as to his guilt Shumaker was punished severely, and as the conviction was by the highest court of the state, Shumaker's only appeal lay to the governor of the State of Indiana, and when the court declared the pardon issued by the governor as of no force, this evident victim of gross injustice was forced to serve a jail sentence of sixty days.

The authority of our courts depends not upon coercion and punishment, but upon the respect and confidence of the citizenry, and a few instances similar to the Shumaker case will do more harm to the judicial authority than the occasional exercise, or even abuse of the pardoning power of the executive.

The Conservative Approach

The authorities which deny that criminal contempts are so analogous to criminal acts punishable only by indictment or information as to be classified with them for the purpose of the pardoning power are based mainly upon the fact that contempts of court are *sui generis,* that is, in a class by themselves.[96] They proceed upon the assumption that, since constitutional guarantees and criminal procedure are not applied to contempts, they cannot therefore be validly looked upon as crimes, and thus pardonable.

This point of view is best represented by the opinion of Judge Ryan in his dissent in the case of State v. Magee Publishing Company et al.[97]

---

[95] State v. Shumaker et al., 163 N.E. 172 (Ind.).
[96] Bessette v. W. B. Conkey Co., 194 U.S. 324, 326.
[97] 224 P. 1028.

in which he was considering the fact that although the Constitution provided the accused with a jury trial in criminal prosecutions, this right to a jury trial had been denied to the accused in a contempt case. He said: [98]

> The expression (criminal prosecution) cannot carry radically different meanings in the two provisions; it cannot be Dr. Jekyl to support a pardon and Mr. Hyde to deny a trial by jury.

As to the attempt to reconcile the differences between contempts and criminal prosecutions, Lardner said: [99]

> Rather than trying to classify contempts with crimes, would it not be better to set them apart as a class by themselves and not strive to reconcile the summary jurisdiction of the courts with the constitutional guarantee of a jury trial in criminal cases.

The mechanistic method of approach consists of reviewing the numerous procedural differences between contempts and crimes and overlooking the basic criminality of contemptuous acts and of contempt procedure. This line of reasoning is termed mechanistic because it relies rather dogmatically upon the prior decisions, rather than upon independent consideration of the problems presented.

This line of reasoning also holds that, even if contempts are conceded to be of a criminal character, they are of quite a different type than acts punishable in the ordinary manner. This distinction was pointed out by Lardner: [100]

> The offense might be construed as being against the judge in his official capacity, distinct either from his personal capacity or from an offense against the United States.... The court might well hold that the offense is without the pardoning power of the president, because it is the one distinctive offense which does not directly affect the sovereign people, as murder, etc.

Likewise in the case of State ex rel. Rodd v. Verage the Supreme Court of Wisconsin stated: [101]

> Contempt of court is in a sense a public offense; certain it is that it is not the ordinary public offense.... It is an offense against the public only because the offensive conduct interferes with the proper function of an independent branch of government which society has erected for its own purposes.

The most glaring example of the unrealistic attitude of the courts with reference to the contempt power and the pardoning power is to be found in the opinion of the court in the case of Taylor v. Goodrich, where there was an absolute failure to realize that there was any need for the pardoning power in contempt cases, and seemingly attempted to wax sarcastic at the expense of the opinion of the Court of Appeals of Louisiana in the Sauvinet case: [102]

> It is there contended that it is essential that the pardoning power should exist in such cases, because it is necessary that the governor, as the balance of power, should have the authority to hold in check the abuses of the courts in

---

[98] 224 P. 1028, 1042 (N.M.).
[99] 2 Rocky Mountain Law Review, 137, 145.
[100] Ibid, 147.
[101] 187 N.W. 830.
[102] State ex rel. Van Orden v. Sauvinet, 24 La.Ann. 119.

the exercise of tyrannical and despotical authority in the performance of their judicial functions. It is possible, as indicated by the history of Louisiana at the time the decision was rendered, that there was a necessity for such a rule in that state, and that the danger to the citizen from the tyranny and the usurpation of the courts may have been more real than fancied, but it is extremely doubtful if such conditions ever existed, or ever will exist, in any other of the states of the American Union, where it may be necessary to clothe the executive of the state with authority to direct and control abuses by the courts.[103]

The Practical Approach

One other factor which may be of great importance in arriving at a decision in favor of the executive is the question as to what has been the practice of the executive in the past.

This approach was of particular value to Taft in upholding the pardoning power of the President in the Grossman case. As a result of an investigation of the files of the Department of Justice, Attorney-General Stone was able to set forth the fact that the pardoning power had been exercised by the Presidents of the United States upon twenty-seven occasions other than those set forth in the opinions of his predecessors in office.[104] The first of these pardons was issued by President John Quincy Adams in 1827, while the most recent had been issued by President Coolidge in 1923.

In view of the opinions of the Attorneys General and the practice of the President under them, Taft held that:[105]

Moreover, criminal contempts of a Federal court have been pardoned for eighty-five years.... Such long practice under the pardoning power and acquiescence in it strongly sustain the construction it is based on.

Use of Pardoning Power

The constitutional authority of executives to issue pardons in contempt cases has become of increasing importance in more recent years because of its more frequent exercise, and because of its almost exclusive use in those contempts whose inclusion within the summary jurisdiction has been most frequently criticized. Thus the various Presidents of the United States[106] pardoned only seven persons within the first one hundred years after the establishment of our federal system of government, while during the period from 1890 to the present, thirty-five persons have benefitted by the clemency of the Executive.

A review of the pardons granted by the Presidents and Governors in contempt cases shows that the contempt charges nearly always originated either in publications or in the violation of injunctions issued in labor disputes or against liquor nuisances. Of the thirty-nine persons pardoned by the Presidents, whose records are available, twenty-seven were

---

[103] 40 S.W. 515, 522 (Tex.).

[104] See the Appendix to the brief of Attorney General Stone in the case of Ex parte Grossman, supra. As this list of pardons is not generally available the writer has inserted it in an appendix, Page 97.

[105] Ex parte Grossman, 267 U.S. 87, 118.

[106] See Appendix A, Page 97.

convicted for such contempts, and since 1890, of the thirty-five persons pardoned, only eight had been punished for other types of contempts. Of these the largest class, to the number of twenty-one, had been punished as a result of labor activities, sixteen for having violated labor injunctions, and five for interfering with the running of railroads in receivership in the Federal courts.

In the state pardon cases the contempt generally was the result of a publication.

APPENDIX A

List of Pardons Granted by Presidents in Contempt Cases

NOTE.—This list has been taken from the Appendix to the Brief of the Attorney General in the Supreme Court of the United States in the case of Ex parte Grossman, covering the period from 1789 to 1923. Information supplementing this and bringing the matter down to date has been obtained through James A. Finch, Pardon Attorney, Department of Justice.

Pardoning President	*Person (or Persons) Pardoned*	*Date Pardoned*	*Sentencing Court*	*Contemptuous Act*
J. Q. Adams	Jeremiah Ten Eyck	June 9, 1827	Fed. Dist. Ct. for Dist. of Michigan	No record.
Tyler	John McCalla	May 24, 1841	Fed. Dist. Ct. for Dist. of Kentucky	Court official gave bad check.
Taylor	John N. Smith	Dec. 28, 1849	Fed. Dist. Ct. for Southern Dist. of N.Y.	No record.
Buchanan	George S. Selden	July 21, 1858	Fed. Dist. Ct. for Western Dist. of Pa.	No record.
Grant	Alexander Hama	Sept. 20, 1872	Fed. Dist. Ct. for Western Dist. of Pa.	Violation of patent injunction.
Grant	A. H. Peck	Sept. 24, 1875	Fed. Dist. Ct. for Western Dist. of Pa.	Violation of patent injunction.
Hayes	John L. Mason	Sept. 26, 1877	Fed. Dist. Ct. for Dist. of New Jersey	Violation of patent injunction.
Harrison	Alejandro Savin	Jan. 31, 1890	Fed. Dist. Ct. for Southern Dist. of Calif.	Deterring witness.
Cleveland	Dong Sun	Dec. 7, 1896	Fed. Dist. Ct. for Northern Dist. of Calif.	Deterring witness.
Cleveland	Wong Gim	Feb. 1, 1897	Fed. Dist. Ct. for Northern Dist. of Calif.	Witness, failure to appear.
Cleveland	Thomas Prindeville	Feb. 18, 1897	Fed. Dist. Ct. for Southern Dist. of Calif.	Interferring with railroad receiver.
McKinley	Alex. McKenzie	May 24, 1901	Fed. Circuit Ct. of Appeals of Alaska	Court officer disobeyed court order.
Roosevelt	Weber, Haddon, Clarkson, T. and C.Braley	May 6, 1902	Fed. Dist. Ct. for Western Dist. of Va.	Interferring with railroad receiver.
Roosevelt	Claude A. Frost	May 13, 1902	Fed. Circuit Ct. of Appeals of Alaska	Outgrowth of McKenzie case.
Roosevelt	James Green	Feb. 4, 1903	Fed. Dist. Ct. for Western Dist. of Va.	Violation of labor injunction.
Roosevelt	Edward Grant	Mar. 31, 1903	Fed. Dist. Ct. for Western Dist. of Va.	Violation of labor injunction.
Taft	Louis Pratt and R. E. Leber	June 10, 1910	Fed. Dist. Ct. for Fourth Dist. of Alaska	Adv. disobedience, disobeying subp.
Taft	Arthur Lambert and Edward Roberts	June 11, 1912	Fed. Dist. Ct. for Eastern Dist. of S. C.	Violation of inj. against trespass.
Wilson	Ledvinka, Oates, Stephens, and Sellins	Dec. 7, 1916	Fed. Dist. Ct. for Northern Dist. of W.Va.	Violation of labor injunction.
Wilson	Stewart, Burnett, Dunn, and Gripando	Mar. 1, 1917	Fed. Dist. Ct. for Western Dist. of Ark.	Violation of labor injunction.
Wilson	Donald Swepston	July 25, 1918	Fed. Dist. Ct. for Southern Dist. of Ohio	Jailer, allowed prisoners leave.
Harding	W. D. Curtis	Sept. 25, 1922	Fed. Dist. Ct. for Western Dist. of Tenn.	Violation of labor injunction.
Harding	Oscar Danielson and Roy Adams	Mar. 28, 1923	Fed. Dist. Ct. for Southern Dist. of Ill.	Violation of labor injunction.
Harding	Vane Bowers	June 19, 1923	Fed. Dist. Ct. for Eastern Dist. of Mo.	Violation of labor injunction.
Harding	Asa W. Campbell	June 19, 1923	Fed. Dist. Ct. for Eastern Dist. of Mo.	Violation of labor injunction.
Coolidge	Charles L. Craig	Dec. 3, 1923	Fed. Dist. Ct. for Southern Dist. of N.Y.	Publications attacking court.
Coolidge	Philip Grossman	Dec. 20, 1923	Fed. Dist. Ct. for Northern Dist. of Ill.	Violation of liquor nuisance injunc.
Coolidge	Harry Maynard	Jan. 22, 1929	Supreme Ct. of the Dist. of Columbia	Violation of liquor nuisance injunc.
Hoover	Will Ladd	June 6, 1932	Fed. Dist. Ct. for Middle Dist. of N. C.	Violation of liquor nuisance injunc.

It should also be noted that on December 15, 1923, President Coolidge granted a thirty-day respite to Joseph Heintz, Oscar Weinbrod, and Max Smithberger, who had been fined $1,000 and sentenced to imprisonment for one year for violating a liquor nuisance injunction. by the Federal District Court for the Northern District of Illinois. No further action was taken.

APPENDIX B

Digest of State Laws on Contempt

United States Statutes—Act of 1931, see text, page 54; Clayton Act, see text, page 42; Norris Act, see text, page 44; Injunction Provisions of Prohibition Act, see text, page 39.

In compiling this Appendix, the author has omitted statutes which merely confer power upon the courts to punish violations of orders and misbehavior of officers, without setting penalties, since the judiciary may be said to possess these powers *ex necessitate*.

Statutes which merely codify accepted rules as to procedure have also been omitted.

ALABAMA

Alabama Code of 1928 Annotated

Acts Punishable

8574—The powers of the several courts in this state to issue attachments and inflict summary punishment for contempts does not extend to any other cases than (1) Disrespectful, contemptuous, or insolent behavior in court, tending in anywise to diminish or impair the respect due to judicial tribunals, or to interrupt the due course of trial. (2) A breach of the peace, boisterous conduct, violent disturbance, or any other act calculated to disturb or obstruct the administration of justice, committed in the presence of the court, or so near thereto as to have that effect. (3) The misbehavior of any officer of the court, in his official transactions, or the disobedience or resistance of any officer of the court, party, juror, witness, or any other person to any lawful writ, process, order, rule, decree, or command thereof. (4) Deceit, or the abuse of the process or the proceedings of the court, by any person or party, or any unlawful interference with the process or proceedings of the court. (5) Refusing to be sworn, or to answer, either in the court or before the grand jury, any lawful question as a witness or garnishee. (6) When summoned as a juror in a court, improperly conversing with a party to an action, to be tried at such court, or with any other person in relation to the merits of such action, or receiving a communication from a party, or other person, in respect to it, without immediately disclosing the same to the court. (7) Conversing with a juror, knowing him to be such, in relation to the merits of any action which he is engaged in the trial of; or supplying any juror with refreshments of any kind, except water, during the time he is engaged in the trial of any cause, without leave of the court.

8576—Section (2) grants every court power to enforce order before a person or body empowered to conduct a judicial investigation under its authority.

Statutory Punishment

3798—The courts of this state may punish for contempt by fine and imprisonment, one or both, as follows: The supreme court by fine of $100 and imprisonment of 10 days; the circuit courts by fine of $50 and imprisonment of 5 days; the courts of probate and county courts and registers by fine of $20 and imprisonment of 24 hours; the courts of county commissioners by fine of $10 and imprisonment of 6 hours; and justices of the peace by fine of $6 and imprisonment of 6 hours.

Power of Judicial Officers, Justices of the Peace, and Others

See provisions of section 3798 above.

6517—Grants registers power to punish by fine of $10 and imprisonment of 2 days.

Miscellaneous

9297—Provides that the violation of injunctions against bawdy houses shall be punishable by fine of $100 to $200, and to 3 months imprisonment.

9689—Provides that the failure to obey a summons to serve as a grand or petit juror without good cause may be punished by fine of $100 and 10 days imprisonment.

ARIZONA

Revised Code of Arizona, 1928 (Struckmeyer)

Jury Trial

4473—Grants the right of trial by jury for violation of court orders. (This provision, a copy of the Clayton Act, was held unconstitutional in Van Dyke v. Superior Court, 211 P. 576.)

Miscellaneous

4473—Provides that the violation of court orders may be punished by a fine of $1000 and 6 months imprisonment.

4572—Provides that contempts shall also constitute misdemeanors.

3722—Provides that petitions for a change of judge are not to constitute contempts.

732—Provides that the failure to comply with order of Corporation Commission punishable by fine of $100 to $5000.

4911—Provides that resistors of process and their aiders and abettors are to be punished.

ARKANSAS

Digest of Statutes of Arkansas (Crawford and Moses) 1921

Constitutional Provisions

Art. 7, Sec. 62—The General Assembly shall have power to regulate by law the punishment of contempts not committed in the presence or hearing of the courts, or in disobedience to process.

Actions Punishable

1484—Every court of record shall have power to punish, as for criminal contempt, persons guilty of the following acts: (1) Disorderly, contemptuous or insolent behavior committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority. (2) Any breach of the peace, noise or disturbance directly tending to interrupt its proceedings. (3) Willful disobedience of any process or order lawfully issued or made by it. (4) Resistance willfully offered by any person to the lawful order or process of the court. (5) The contumacious and unlawful refusal of any person to be sworn as a witness, and, when so sworn, the like refusal to answer any legal and proper interrogatory.

Statutory Punishment

1485—Provides that the fines shall in no case exceed the sum of $50, nor the imprisonment 10 days.... When any person shall be committed to prison for the nonpayment of any fine he shall be discharged at the expiration of 30 days. (Nevertheless the Supreme Court of Arkansas has upheld sentences substantially in excess of these limits in CarlLee v. State, 143 S.W. 909, and Turk and Wallen v. State, 185 S.W. 472.)

4166—Provides that the disobedence of a subpoena, or a refusal to be sworn or to answer as a witness, or to subscribe to an affidavit or deposition shall be punished by a fine not exceeding $30 and 24 hours imprisonment.

Power of Judicial Officers, Justices of the Peace, and Others

1490—Grants justices of the peace power to punish (1) contemptuous behavior toward justice while engaged in official duties; (2) breach of the peace so near thereto as to

interrupt the proceedings; (3) resistance in his presence to the execution of any process issued by him; (4) to the disobedience of any process issued by him requiring the attendance of a witness.

1491—Grants justices of peace power to punish by fine of $30 and 5 days imprisonment.

1492—Grants right to hearing in all contempts before a justice of peace.

5112—Grants officer issuing writ of habeas corpus in vacation power like the courts to compel the attendance and testimony of witnesses.

1688—Grants Corporation Commission power to fine witnesses similar to that of circuit court.

1586—Grants coroners power to punish witnesses.

1601—Grants coroners power to punish jurors by fine of $10.

Miscellaneous

6202—Provides for the punishment of violations of liquor nuisance injunctions, or breaking into or using property closed by the injunction, shall be punished by fine of $50 and 30 days to 6 months imprisonment.

3335—Provides that the refusal to assist court officer in the execution of process shall be a contempt.

601—Provides that practicing law without a license constitutes a contempt.

2393—Authorizes punishment of printer refusing to divulge name of person that had article printed branding person as a coward for not accepting a challenge to a duel.

3334—Provides that resistors of process and their aiders and abettors are to be punished.

CALIFORNIA

Deering's Codes and General Laws of California 1931 and 1933 Supplement

CCP—Code of Civil Procedure; SuppCCP—Code of Civil Procedure in Supplemental Volume; PolC—Political Code; PC—Penal Code; GL—General Laws

Acts Punishable

CCP1209—The following acts or omissions, in respect to a court of justice, or proceedings therein, are contempts of the authority of the court: (1) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding; (2) a breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding; (3) misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service; (4) abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court; (5) disobedience of any lawful judgment, order, or process of the court; (6) assuming to be an officer, attorney, or counselor of a court, and acting as such without authority; (7) rescuing any person or property, in the custody of an officer, by virtue of an order or process of such court; (8) unlawfully detaining a witness, or party to an action, while going to, or remaining at, or returning from the court where the action is on the calendar for trial; (9) any other unlawful interference with the process or proceedings of a court; (10) disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness; (11) when summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court; (12) disobedience, by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer. (13) Practicing law or advertising or holding one's self out as practicing or as entitled to practice law, in any court, except a justice's or police court, without having received a license as attorney and counselor, issued under the laws of this state. But no speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings. (Limitations doubtful. In re Shortridge, 34 P. 227.)

Statutory Punishment

SuppCCP1218—Grants power to punish by fine of $500 and 5 days imprisonment.

Power of Judicial Officers, Justices of the Peace, and Others

GL6386-81—Grants power to railroad commission to enforce orders, as courts of record.

PolC2023—Grants power to military courts to compel attendance of witnesses, as superior courts.

SuppCCP1218—Grants power to justice of peace to punish by fine of $100 and 1 day.

CCP178—Grants power to judicial officers to keep order and compel obedience and attendance.

CCP906—Grants power to justice of peace to punish following acts and no other: (1) Misbehavior in presence; (2) noise so near as to interrupt; (3) disobedience or resistance of process; (4) disobedience of a subpoena or refusal to testify; (5) rescue; (6) abuse of process, acting in official capacity without authority, or detaining witnesses, and (7) jurors failing to attend or conversing as to merits or receiving communications as to pending cases.

Miscellaneous

CCP1210—Authorizes punishment for persons ejected from land, making security thereon or aiding and abetting others from unlawfully entering.

CCP2068—Authorizes punishment for arresting witnesses.

CCP183—Authorizes punishment for application of orders to judge of similar rank, after being once refused.

CCP1097—Authorizes punishment of person refusing to act as interpreter.

PC166—Provides for the punishment of contempts as misdemeanors.

PC724—Authorizes punishment of resistors to process and aiders and abettors.

CCP1097—Failure to obey mandamus punishable by fine of $1000.

SuppCCP721 — Authorizes punishment by courts of contempts before referees.

CCP1222—No appeal in contempt cases.

COLORADO

Courtright's Mills Annotated Statutes 1928 and Courtright's Mills Annotated Code of Civil Procedure 1933

Acts Punishable

CCP372—The following acts or omissions shall be deemed contempt: (1) Disorderly, con-

temptuous or insolent behavioir towards the judge whilst holding court or engaged in his judicial duties at chambers, or towards referees or arbitrators, while sitting on a reference or arbitration, tending to interrupt the due course of trial, reference or arbitration or other judicial proceedings. (2) A breach of the peace, boisterous conduct or violent disturbance in the presence of the court, or its immediate vicinity, tending to interrupt the due course of a trial or judicial proceedings. (3) Disobedience to any lawful writ, order, rule or process issued by the court, or judge at chambers. (4) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness. (5) Rescuing any person or property in the custody of an officer, by virtue of an order or process of such court or judge at chambers. (Only civil contempts. Wyatt v. People, 28 P. 960.)

Statutory Punishment

CCP380—Authorizes punishment by fine up to $500. See Note above.

Jury Trial

CCP379—Provides that in all cases where the alleged contempt is not committed in the immediate view or presence of the court or judge, the person arrested may, upon demand therefor, be tried by a jury. (Held unconstitutional in Cooper v. People, 22 P. 790, and Hughes v. People, 5 Colo. 436.)

Powers of Judicial Officers, Justices of the Peace, and Others

CCP228—Authorizes referee to punish, but defendant may take case to the court itself.

4467—Grants justices of the peace power to keep order and to punish by $5 fine.

1416—Grants coroners power similar to that of justice of peace.

Miscellaneous

1888—Authorizes punishment of printer refusing to divulge person charging another a coward for refusing a challenge to duel.

302—Authorizes punishment of person practicing law without a license.

CCP206—Provides for punishment of person discussing case with jurors examining mine by fine of $100, and 10 days imprisonment.

CCP370—Provides for punishment of disobedience by magistrates, inferior courts of mandate of higher court by $1000 fine, and 3 months if persisting in conduct.

103—Provides for punishment for interference with assignee, as an officer of court.

2117—Authorizes punishment of jury officers for violations of their oaths and negligent performance of duty, and of persons conversing with jurors, by fine and imprisonment (no amount stated).

686—Authorizes courts to punish officials of State House for Neglected Children.

2381e—Authorizes punishment for bringing suits as to registration lists without probable cause, and for delay.

4239—Authorizes punishment for failure to appear for grand or petit jury service.

CONNECTICUT

General Statutes of Connecticut, 1930

Statutory Punishment

5405—Limits punishment to fine of $100 and 6 months imprisonment.

Powers of Judicial Officers, Justices of the Peace, and Others

5405—Limits justices of the peace to fine of $7 and 30 days imprisonment.

5861—Grants power to auditors and committees to punish witnesses similar to that of justice of peace.

2556—Grants power to state water commission to punish witnesses.

1007—Grants power to commissioner of motor vehicles to punish witnesses.

366—Grants power to grand jurors of towns to commit witnesses.

255—Grants power to coroners to punish witnesses similar to that of justice of peace.

490—Grants power to board of police commissioners to commit witnesses 30 days.

1870—Grants power to juvenile courts to enforce their orders by fine of $100 and 6 months imprisonment.

691—Grants power to state referee to punish witnesses in a proceeding to determine whether a crime has been committed by fine of $25 and 30 days imprisonment.

Miscellaneous

2695—Provides that the violation of injunctions against bawdy houses shall be punishable by fine of $500, and 2 months imprisonment.

2696—Provides similar penalties for breaking into or using property ordered closed under preceding section.

691—Provides for the punishment of witnesses in a proceeding to determine whether a crime has been committed, by fine of $25 and 30 days imprisonment.

DELAWARE

Delaware Revised Code, 1915

Powers of Judicial Officers, Justices of the Peace, and Others

2139—Grants power to the Mayor of Wilmington to punish witnesses.

2121—Grants power to the Municipal Court of Wilmington to punish contempts.

3955—Grants power to justices of the peace to punish disorders in their presence by fines of $10 and 10 days imprisonment.

Miscellaneous

4269—Provides for punishment of court officers for failure to draw and summon jury by fine of $50.

FLORIDA

Compiled General Laws of Florida, 1927

Powers of Judicial Officers, Justices of the Peace, and Others

2153—Grants county commissioners power to punish contempts in presence by fine of $20 and 1 day imprisonment.

2066—Grants military courts power to punish contempts in presence by imprisonment for 3 days.

6741—Grants railroad commission power like circuit court as to contempts committed in presence and by witnesses.

4161—Justices of the peace empowered to punish by fine of $20 and imprisonment of 1 day.

8206—Grants power to committing magistrate during examination.

Miscellaneous

4375—Failure of witness to attend in civil suit punishable by fine of $100.

4162—Contains a provision that nothing said or written in vacation to or of any judge, or of any decision made by a judge, shall in any case be construed to be a contempt.

5768—Failure of corporation to deliver title abstracts made a contempt.

GEORGIA

Georgia Code of 1926. PC—Penal Code

Constitutional Provision

6376—The power of the courts to punish for contempts shall be limited by legislative acts.

Acts Punishable

4643—The powers of the several courts in this state to issue attachments and inflict summary punishment for contempt of court shall not extend to any cases, except the misbehavior of any person or persons in the

presence of said courts or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any officer of said courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the said court. (Unconstitutional. Bradley v. State, 36 S.E. 630.)

Statutory Punishment

5852—Authorizes punishment of witnesses for nonattendance by fine of $300.

4849—Grants power to superior courts to punish by fine of $200 and 20 days imprisonment.

6103-6—Grants power to supreme court to punish by fine of $500 and 10 days imprisonment.

4831(16)—Grants city courts same power as superior courts.

PC790(7)—Grants criminal courts same power as superior courts.

4775(38)—Grants power to county judge to punish by fine of $100 and 10 days imprisonment.

Jury Trial

4643(a)—Provides for judge to act upon answers of jury. (Unconstitutional as to court of record. In re File, 76 S.E. 397.)

Powers of Judicial Officers, Justices of the Peace, and Others

1754(15)—Grants power to board of dental examiners to punish contempts in presence and by witness by fine of $100 and 10 days imprisonment.

730—Grants power to road commissioners courts to punish by fine of $5 and 5 days imprisonment.

4791—Grants power to ordinaries courts to punish by fine of $50 and 5 days imprisonment.

PC900(7)(31)—Grants power to juvenile court to enforce summons and maintenance order.

4679—Grants power to justices of the peace to punish by fine of $5 and 5 hours imprisonment.

Miscellaneous

5337(5)(6)—Authorizes punishment for violation of liquor nuisance injunctions, and for breaking into or using property closed by such injunction.

PC1155—Provides fine of $25 to $50 for sheriff failing to keep record of prisoners.

PC341—Authorizes punishment of newspaperman refusing to testify as to libel in paper.

3384—Authorizes punishment of county surveyor for failure to perform duties.

4960—Provides for a minimum fine of $500 upon attorney for filing an unauthorized appearance.

6268—Authorizes punishment of attorneys or court officers going bail or security (violation of court rules).

3862—Authorizes punishment for failure to file will with ordinary.

5902—Authorizes punishment for failure to return commission or extracting same.

IDAHO

Idaho Code Annotated, 1932

Acts Punishable

13-601—The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court: (1) Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceedings. (2) A breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceedings. (3) Misbehavior in office or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner or other person appointed or elected to perform a judicial or ministerial service. (4) Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding. (5) Disobedience of any lawful judgment, order or process of the court. (6) Assuming to be an officer, attorney, counsel of a court, and acting as such without authority. (7) Rescuing any person or property in the custody of an officer by virtue of an order or process of such court. (8) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial. (9) Any other unlawful interference with the process or proceedings of a court. (10) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness. (11) When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court. (12) Disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer. (Does not limit courts of record. McDougall v. Sheridan, 128 P. 954.)

Statutory Punishment

13-610—Grants courts power to punish by fine of $500 and 5 days imprisonment.

Powers of Judicial Officers, Justices of the Peace, and Others

10-1201—Grants power to probate and justices courts to punish (1) contemptuous behavior toward the judge or justice while holding court; (2) a breach of the peace in the presence of the judge or justice or so near as to interrupt the proceeding; (3) disobedience or resistance to the execution of process; (4) disobedience to a subpoena duly served or refusing to be sworn or to answer as a witness; (5) rescuing any person or property in the custody of an officer by virtue of an order.

10-1204—Grants probate and justices courts power to punish by $100 fine and 1 day imprisonment.

1-1902—Grants judicial officers power to keep order, compel obedience and attendance.

49-349—Grants to police judges power of district court to keep order and enforce orders.

Miscellaneous

18-603—Provides for the punishment of violations of liquor nuisance injunctions by fine of $100 to $500 and 30 days to 6 months imprisonment.

51-408—Authorizes punishment of violations of injunctions against moral nuisances.

53-1325—Authorizes punishment of violations of injunctions against unlawful practice of dentistry.

13-602—Authorizes punishment for re-entry upon land by person ejected therefrom.

3-104—Authorizes punishment for practicing law without a license.

16-304—Authorizes punishment for arrest of witnesses.

17-1020—Authorizes punishment for contempts as misdemeanors.

1-617—Authorizes punishment for application for order disallowed by judge of same rank.

13-314—Provides for punishment of disobedience of peremptory mandamus by $1000 fine.
13-614—Provides that there shall be no appeal in contempt cases.

ILLINOIS

Cahill's Illinois Revised Statutes, 1933

Power of Judicial Officers, Justices of the Peace, and Others

3-133—Grants county courts same power as circuit courts.
37-457—Grants Chicago Municipal Court power to commit debtor concealing assets for 6 months.
23-323, 345, 346—Grants juvenile court power to enforce orders.
79-162—Grants justices of the peace power to punish defaulting witneses or jurors by fine of $1 to $10.
79-163—Grants justice of the peace power to punish misbehavior in presence by $5 fine.
46-460—Grants county courts power to punish a number of election officials and others for contempt.

Miscellaneous

146-21 (1)—Provides for change of venue when the contempt consisted of an attack upon the conduct or character of the judge.
38-181—Authorizes punishment of printer for refusing to tell who wrote article calling person a coward for not accepting a challenge to a duel.
38-744—Provides for punishment of grand juror or court officer divulging information to indictment not yet public by fine of $500.
78-15—Provides for punishment of juror for failure to appear by fine of $5 to $100.
78-11—Provides for punishment of sheriff for failure to summons juror by fine of $10 to $200.
78-13—Provides for punishment of person seeking to secure job on jury by fine of $20.
51-32—Authorizes punishment for breaking open a sealed deposition.
10-10—Authorizes punishment to enforce arbitrators award.
107-11—Authorizes punishment to enforce payment of pauper's support.
94-3—Authorizes punishment of mine surveyor for nonperformance of duties.

INDIANA

Burns Annotated Indiana Statutes 1926, Session Laws 1931 and 1933

Acts Punishable

1076—Every person who shall, by the commission of any felony, misdemeanor or other unlawful act, or who, by talking, moving about, or by signs or gestures, or in any other manner, in any court of record, while the same is open for the transaction of business, and engaged therein, creates any noise or confusion therein, whereby the business and proceedings of said court shall be disturbed, shall be deemed to be guilty of a direct contempt of said court.

1077—Every person who, being sworn to testify as a witness in any court of record, in any trial or proceeding therein, shall refuse to testify touching the same; or who, being required by any court to be sworn in any such trial or proceeding, shall refuse to take an oath or affirmation therein; or who, while upon the witness stand, shall purposely so demean himself as to retard or disturb the proceedings thereof, shall be deemed guilty of a direct contempt thereof.

1078—Every person who shall be guilty of any willful disobedience of any process or any order lawfully issued by any court of record, or by the proper officer thereof, under the authority of law or the direction of such court, after the same shall have been served upon him, shall be guilty of an indirect contempt of the court from which such process or order shall have issued.

1079—Every person who shall willfully resist, hinder or delay the execution of any lawful process or order of any court of record shall be guilty of an indirect contempt of said court. And every person who shall offer, give or promise any reward, or who shall threaten to assault or injure, or shall assault or beat, or in any other manner whatever influence or intimidate, or attempt to influence, any witness to give or abstain from giving testimony in any case, or to abstain from attending as such witness in any case; or who shall do any act to put such witness in fear, on account of any testimony which he or she may have given; or who, on account of any such testimony, shall injure or threaten to injure such witness, shall be guilty of a direct or indirect contempt of the court in which such witness may be called to testify, according as the same may be done in the presence of such court or elsewhere out of the presence thereof.

1080—Every person who shall falsely make, utter or publish any false or grossly inaccurate report of any case, trial or proceeding, or part of any case, trial or proceeding thereof, shall be deemed guilty of an indirect contempt of the court in which such case, trial or proceeding may have been instituted, held or determined; if made at any time after such proceeding shall have been commenced, and at any time while the same is pending, and while the court shall have jurisdiction thereof, and at any time before it shall be fully determined and ended, or if such report be so made pending such case, trial or proceeding, touching any ruling or order of said court therein, such person shall be deemed guilty of an indirect contempt of the court making such ruling or order. (Inherent power can not be limited. Little v. State, 90 Ind. 338; Holman v. State, 5 N.E. 556.)

Jury Trial

Ch. 12, Sec 11, Acts 1931—Provides for trial by jury in labor injunction violations, provided that contempt not in presence of court or so near thereto as to obstruct the administration of justice, and not the misbehavior of an officer of the court.

Statutory Punishment

1081—Grants power to punish by fine of $500 and 3 months imprisonment.

Power of Judicial Officers, Justices of the Peace, and Others

1916—Grants to justices of the peace power to punish contempts by fine of $5 and 3 hours imprisonment, and to enforce attendance of witnesses by $5 fine.
1839—Grants to master commissioners power to punish like justices of peace.
10284—Grants to common council of each city power to punish disorder in presence.

Miscellaneous

Ch. 12, Sec. 12, Acts 1931—Provides for a change of judge in labor injunction violation cases.

Ch. 26, Sec. 1, Acts 1933—Provides that in other than the supreme and appellate courts, in indirect contempt cases, except those growing out of resisting or disobeying process, the judge shall name three other judges or attorneys, each side to strike off one name, and the other to try the case and assess the punishment.

Ch. 26, Sec. 2, Acts 1933—Provides that in similar cases in supreme and appellate courts the person not stricken off shall merely investigate and report to the court.

1082—Grants to contemnor right to be heard and to ask reconsideration in direct contempt case.
2121—Provides for punishment of grand juror for failure to appear by $10 fine.
8731, 8732—Provides for punishment of violation of injunction against bawdy house and breaking into or using closed property by fine of $200 to $1000 and 3 to 6 months imprisonment.
2138—Authorizes punishment of witness refusing to testify before grand jury.
2254—Authorizes punishment for soliciting sheriff to include self or another on jury.
1320—Authorizes punishment for concealing or disposing of property sought to be replevined.

IOWA

Code of Iowa, 1931

Acts Punishable

12541—The following acts or omissions are contempts, and are punishable as such by any of the courts of this state, or by any judicial officer, including justices of the peace, acting in the discharge of an official duty, as hereinafter provided: (1) Contemptuous or insolent behavior toward such court while engaged in the discharge of a judicial duty which may tend to impair the respect due to its authority. (2) Any willful disturbance calculated to interrupt the due course of its official proceedings. (3) Illegal resistance to any order or process made or issued by it. (4) Disobedience to any subpoena issued by it and duly served, or refusing to be sworn or to answer as a witness. (5) Unlawfully detaining a witness or party to an action or proceeding pending before such courts, while going to or remaining at the place where the action or proceeding is thus pending, after being summoned, or knowingly assisting, aiding, or abetting any person in evading service of the process of such court. (6) Any other act or omission specially declared a contempt by law. (Held to have repealed common law of contempts. Drady v. District Court of Polk County, 102 N.W. 115.)

12542—In addition to the above, any court of record may punish the following acts or omissions as contempts: (1) Failure to testify before a grand jury, when lawfully required to do so. (2) Assuming to be an officer, attorney, or counselor of the court, and acting as such without authority. (3) Misbehavior as a juror, by improperly conversing with a party or with any other person in relation to the merits of an action in which he is acting or is to act as a juror, or receiving a communication from any person in respect to it without immediately disclosing the same to the court. (4) Bribing, attempting to bribe, or in any other manner improperly influencing or attempting to influence a juror to render a verdict, or suborning or attempting to suborn a witness. (5) Disobedience by an inferior tribunal, magistrate, or officer to any lawful judgment, order or process of a superior court, or proceeding in any manner in a matter contrary to law, after it has been removed from such tribunal, magistrate, or officer.

12543—Grants power to courts of record to fine $50 and imprison 1 day, others $10 fine.

Power of Judicial Officers, Justices of the Peace, and Others

5205—Grants power to coroners as to witnesses similar to power of justice of peace.
11525—Grants power to referees, similar to court appointing them.
1016—Grants power to Secretary of State as to witness in contested election court.
1032—Grants power to contested election court for county officers.

Miscellaneous

1606, 1609—Provides for punishment of violation of bawdy house injunction, and for breaking into or using closed property by $200 to $1000 fine, and 3 to 6 months imprisonment.
2029, 2039, 2033—Provides for punishment of violation of liquor nuisance injunction, breaking into or using closed property, by fine of $200 to $1,000 and 3 to 6 months imprisonment; second offense, $500 to $1000 fine, and 6 months to 1 year imprisonment.
7884—Provides for enforcement of mandatory injunction by fine of $1000.
12439—Provides for enforcement of orders in quo warranto by fine of $5000.
1334—Authorizes punishment of resistors of process and aiders and abettors.
13687—Authorizes punishment of challenged and special grand jurors, for illegally serving.
10845—Authorizes punishment for jurors, false statements to dodge service.
12735—Authorizes punishment over assignee for the benefit of creditors.
12817—Authorizes punishment for disposing or concealing property sought to be replevined.
13709—Authorizes punishment of witnesses for not testifying before grand jury.
11477—Authorizes punishment of jurors for failure to be present at panel call.

KANSAS

Revised Statutes of Kansas, 1923

Statutory Punishment

20-302—Grants the district courts power to punish by fine of $100 and to imprison (no term stated).
60-2814—Grants power to punish witnesses disobeying subpoena or refusing to be sworn or to testify, by fine of $50.

Power of Judicial Officers, Justices of the Peace, and Others

61-811—Grants justices of the peace power to fine delinquent witnesses $5.
61-821—Grants justices of the peace power to fine jurors refusing to appear or serve $5.
19-1005—Grants to coroners power of justice of peace to punish witnesses and jurors disobeying process.
13-615, 14-817, 15-517—Grants police judges power to punish similar to district courts.

Miscellaneous

21-2131—Provides for the punishment of violations of liquor nuisance injunctions by fine of $100 to $500, and 30 days to 6 months imprisonment.
21-918—Provides same penalties for violation of injunctions against gambling houses.
60-1116—Provides for the punishment of other injunction violations by fine of $200.
60-1712—Provides for the punishment of failure to obey peremptory mandamus, by a fine of $500.
66-181—Provides that in failure to comply with mandamus to perform order of utility commission may be punished by fine of $1000 per day and 1 year imprisonment.
6-110—Provides that the failure to comply with an arbitral award may be punished.
62-917—Provides for the punishment of witnesses failing to appear before grand jury.
62-918—Provides for the punishment of witnesses refusing to testify before grand jury.

KENTUCKY

Carroll's Kentucky Statutes 1930, and Carroll's Kentucky Codes 1932

Jury Trial and Statutory Punishment

1291—Provides that the punishment for contempt shall not exceed a fine of $30 and

imprisonment for more than 30 hours, unless the offender is tried by a jury, who shall have power to assess the punishment within their discretion. (Upheld in Richardson v. Commonwealth, 133 S.W. 213.)

Power of Judicial Officers, Justices of the Peace, and Others

1301—Grants justices of peace, quarterly and police courts power to punish by fine of $3 and 6 hours imprisonment.

71—Grants to arbitrators the power given a justice of the peace.

Miscellaneous

1295—Provides that publications or words out of court are not to be punishable as contempts.

1300—Provides that court officer drawing a grand or petit juror to favor any person shall be punished by a fine of $500.

1295—Provides that forcibly entering a courtroom is a contempt.

Code 49—Provides that the erroneous return of a court officer may be punished by a fine of $10.

Code 205—Provides for punishment of officer of corporation refusing to certify interest of debtor therein.

LOUISIANA

Dart's Louisiana Codes and General Laws

CCP—Code of Criminal Procedure; CP—Code of Practice

Constitutional Provisions

Art. 19, Sec. 17—The power of the courts to punish for contempt shall be limited by law.

Art. 6, Sec. 4—The public service commission shall have power to punish for contempt as fully as is provided by law for the district courts.

Statutory Punishment

CCP12—Grants power to punish by fine of $100 and 10 days imprisonment.

Power of Judicial Officers, Justices of the Peace, and Others

6043—Grants Council of Baton Rouge power to keep order and punish witnesses by 10 days imprisonment.

6180—Grants Council of New Orleans power to keep order and punish witnesses by 10 days imprisonment.

6199—Grants recorders power to keep order and punish witnesses by fine of $25 and 1 day imprisonment.

CCP12--Grants justices of peace and municipal courts power to punish by fine of $10 and 3 days imprisonment.

CP1153—Grants to justice of peace power to punish witnesses by fine of $10 and 1 day imprisonment.

Miscellaneous

CP131—Provides that . . . no publication or utterance out of court, respecting the conduct of such courts or its officers, jurors, witnesses or parties in any cause after judgment shall be construed to be a contempt and punished as such.

CCP1164—Provides for the punishment of violations of bawdy house injunctions by fine of $50 to $250 and 30 days to 6 months imprisonment; both fine and jail for second offense.

CCP1030—Provides for the punishment of violations of gambling nuisance injunctions by minimum fine of $100 and 30 days imprisonment to $250 fine and 6 months imprisonment.

CCP1082—Provides for the punishment of violations of lottery injunction by fine of $100 and 30 days imprisonment.

CP135—Provides for the punishment of witnesses for failure to appear, by fine of $100.

CP136—Provides for the punishment of witnesses for failure and refusal to testify, by fine of $100 and 30 days imprisonment.

CP133—Provides for the punishment of jurors for failure to attend and officers for neglect of duty, by fine of $15; sheriffs and officers for not serving writs, $500 and 30 days imprisonment; and clerks for failure to obey or issue process, $100 fine and 10 days imprisonment.

2081—Provides for the punishment of injunction violations by fine of $1000 and 1 year imprisonment.

452—Provides for the punishment of attorneys by fine of $100 and 1 day imprisonment; if repeated, $200 fine and 10 days imprisonment.

3542—Provides for the punishment of a refusal to testify before fire marshal, by fine of $5 to $50 and 1 to 20 days imprisonment.

4944—Provides for punishment for refusing to testify at investigation of monopoly, by fine of $2000 and 6 months imprisonment.

4943—Provides for punishment of witness divulging testimony at investigation of monopoly, by fine of $50 to $2000 and 5 days to 6 months imprisonment.

CCP371—Authorizes punishment of sequestered witness for communicating with other persons.

CCP11—Authorizes punishment for failure to appear for arraignment.

MAINE

Revised Statutes of Maine, 1930

Power of Judicial Officers, Justices of the Peace, and Others

62-59, 62-73, 67-18—Grants power to public utilities commission to punish like courts of records.

157-3—Grants commissioner of department of public welfare power to punish witnesses.

6-10—Grants board of registration power to punish contempts.

Miscellaneous

96-122—Provides for punishment of witness refusing to attend, by fine of $100.

96-123—Provides for punishment of witness refusing to testify, by fine of $100 and 3 months imprisonment.

120-20—Provides for punishment of juror for nonattendance, by fine of $20.

124-34—Authorizes punishment of debtor for not turning over property, for failure to testify, and for not making full disclosure.

MARYLAND

Annotated Code of Maryland, 1924 (Bagby)

Acts Punishable

26-4—The power of the several courts of the state to issue attachments and inflict summary punishments for contempt of courts shall not be construed to extend to any cases except the following: (1) The misbehavior of any person or persons in the presence of the said court, or so near thereto as to obstruct the administration of justice; (2) the misbehavior of any officers of the said courts in their official transactions; (3) the disobedience or resistance by any officer of the said courts, party, juror, witness or any other person or persons to any lawful writ, process, order, rule, decree or command of the said courts; (4) for unlawfully detaining or fraudulently and wilfully preventing, or disabling from attending or testifying a witness or party to an action, while going to, remaining at, or returning from the court, or sitting of an examiner in equity, or commissioner, where such case may be set for trial, hearing or the taking of testimony; (5) for fraudulently and wilfully removing, concealing or destroying any book,

paper or document for the production of which for purposes of evidence, either at the trial of a cause or before an examiner in equity or commissioner, notice shall have been given; (6) for rescuing any person from the custody or removing any property from the possession of any officer holding said person or property by virtue of any writ of a court of competent jurisdiction; (7) any person for assuming to be an attorney, solicitor or other officer of the court, and acting as such without authority. (Held not to limit powers of courts. Kelly v. Montebello Park Co., 141 Md. 194.)

Statutory Punishment

38-3—Provides that nonpayment of fines up to $50 shall be punished by 30 days imprisonment, fines from $50 to $150 by 60 days; fines from $150 to $500 by 90 days, and fines above $500 by 6 months.

Power of Judicial Officers, Justices of the Peace, and Others

52-29—Grants justices of the peace power to punish defaulting witnesses by $3 fine.

Miscellaneous

87-17—Provides for the punishment of sheriffs for failure to serve process by $50 fine.
16-188—Provides for the enforcement of equity decrees by fine of $20.
75-31—Authorizes punishment of defendant for failure to appear to law suit.
16-210, 211—Authorize punishment of defendant for failure to appear or answer in equity.
16-81—Authorizes punishment of injunction violations by fine and imprisonment.
16-72—Authorizes punishment for secreting infant to prevent service of process.
47-30—Authorizes punishment of debtor for failure to deliver property, list of debts and property, and for destroying books of account.
23-80—Authorizes punishment of officer of corporation for failing to certify debtor's interest.
6-26—Authorizes punishment to enforce payment of damages by runaway apprentice to master.

MASSACHUSETTS

Annotated Laws of Massachusetts

Power of Judicial Officers, Justices of the Peace, and Others

215-57—Grants to probate court power to preserve order and punish contempts.

Miscellaneous

233-5—Provides that witnesses may be punished for nonattendance in criminal prosecutions by fine of $200 and 1 month imprisonment, and in other cases by fine of $20.
224-20—Provides for the punishment of judgment debtors transferring property or money to evade their obligations.
224-18—Provides for punishment of judgment debtor for contempt upon his examination by fine of $20 and 30 days imprisonment.
219-9—Grants trial justices power to fine $10, and imprison for 15 days.

MICHIGAN

Compiled Laws of Michigan, 1929; and Mason's 1933 Supplement

Acts Punishable

13910—Every court of record shall have power to punish by fine or imprisonment or both, persons guilty of any neglect or violation of duty or misconduct, in the following cases, and no others: (1) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority; (2) any breach of the peace, noise or disturbance, directly tending to interrupt its proceedings; (3) all attorneys, counselors, clerks, registers, sheriffs, coroners and all other persons in any manner duly elected or appointed to perform any judicial or ministerial services, for any misbehavior in such office or trust, or for any wilful neglect or violation of duty therein; for disobedience of any process of such court, or any lawful order thereof, or of any lawful order of a judge of such court, or of any officer authorized to perform the duties of such judge; (4) parties to suits for putting in fictitious bail or sureties, or for any deceit, or abuse of the process or proceedings of the court; (5) parties to suits, attorneys, counselors, and all other persons, for the nonpayment of any sum of money ordered by such court to be paid, in cases whereby law execution cannot be awarded for the collection of such sum; the disobedience of or refusal to comply with any order of such court for the payment of alimony, either permanent or temporary, or costs made in any suit for divorce or separate maintenance; and any other disobedience to any lawful order, decree or process of such court; (6) all persons for assuming to be officers, attorneys or counselors of any court, and acting as such without authority; for rescuing any property or persons, which shall be in the custody of an officer by virtue of process issued from such court; for unlawfully detaining any witness or party to a suit, while going to, remaining at, or returning from the court where such suit shall be pending for trial; and for any other unlawful interference with or resistance to the process or proceedings in any action; (7) all persons summoned as witnesses for refusal or neglect to obey such summons, or to attend or to be sworn, or when so sworn to answer any legal and proper interrogatory; (8) persons summoned as jurors in any court, for improperly conversing with any party to a suit to be tried at such court, or with any other person in relation to the merits of such suit; for receiving communications from any such party, or from any other person in relation to the merits of such suit, without immediately disclosing the same to the court; (9) all inferior magistrates, officers and tribunals, for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law, after such cause or matter shall have been removed from their jurisdiction; (10) the publication of a false or grossly inaccurate report of its proceedings; but no court shall punish as a contempt the publication of true, full and fair reports of any trial, argument, proceedings or decisions had in such court; (11) all other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record to enforce the civil remedies of any party, or to protect the right of any such party. (Act held not to limit common law powers of superior courts. Langdon v. Wayne Circuit Judges, 43 N.W. 310.)

Statutory Punishment

13929—Grants power to punish by fine of $250 and 30 days imprisonment.

Power of Judicial Officers, Justices of the Peace, and Others

16264—Grants justices of the peace power to (1) punish contemptuous behavior toward justice during hearing; (2) disturbance so near to as to interrupt proceedings; and (3) resistance in presence to execution of process.

16265—Grants justices of peace power to punish by fine of $25, and 5 days imprisonment; 10 days for nonpayment of fine.
16266—Grants opportunity to offer defense in all cases before justice of peace.
Supp13702-1—Grants power similar to justice of peace to circuit court commissioners.
Supp4685-16—Grants power to license appeal board to punish witnesses.
16403—Grants power similar to circuit courts to police board of Grand Rapids.
15520—Grants power similar to circuit courts to probate courts.

Miscellaneous

9103, 9104—Grants power to punish violations of injunctions against bawdy houses and breaking into or using closed property, $1000 fine and 6 months imprisonment.
17219—Grants power to punish refusal to testify before grand jury, by fine of $100 and 60 days imprisonment.
3196—Grants power to punish violations of order in congressional elections restraining tampering or opening ballot boxes, by fine of $50 to $500.
328—Grants similar power in senatorial elections by fine of $1000.
14107—Authorizes punishment for arrest of witnesses.
9182—Authorizes punishment of intoxicated person for refusal to tell where he got liquor.
14223—Authorizes punishment of expert witnesses receiving more than statutory compensation.
12913—Authorizes punishment for failure to pay bastardy allowance.
Supp16542-48—Authorizes punishment of officer for issuing false certificate of attendance to juror who cashes same.
8216—Authorizes punishment for failure to pay pauper's keep.
611—Authorizes punishment to enforce orders of fire marshal.

MINNESOTA

Mason's Minnesota Statutes and 1931 Supplement

Acts Punishable

9792—Contempts of court are of two kinds—direct and constructive. Direct contempts are those occurring in the immediate view and presence of the court, and arise from one or more of the following acts: (1) Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceedings. (2) A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court.

9793—Constructive contempts are those not committed in the immediate presence of the court, and of which it has no personal knowledge, and may arise from any of the following acts or omissions: (1) Misbehavior in office, or other wilful neglect or violation of duty, by an attorney, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service. (2) Deceit or abuse of the process and proceedings of the court by a party to an action or special proceedings. (3) Disobedience of any lawful judgment, order, or process of the court. (4) Assuming to be an attorney or other officer of the court, and acting as such without authority. (5) Rescuing any person or property in the custody of an officer by virtue of an order or process of such court. (6) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is to be tried. (7) Any other unlawful interference with the process or proceedings of a court. (8) Disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness. (9) When summoned as a juror in a court, neglecting to attend or serve as such, improperly conversing with a party to an action to be tried at such court or with any person relative to the merits of such action, or receiving a communication from a party or other person in reference thereto, and failing to immediately disclose the same to the court. (10) Disobedience, by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, proceeding in an action or special proceeding in any court contrary to law after the same has been removed from its jurisdiction, or disobedience of any lawful order or process of a judicial officer.

Statutory Punishment

9794—Provides that where the contempt is constructive, rights of third party must have been prejudiced before the contempt can be punished by imprisonment or by a fine exceeding $50.

9802—Grants power to punish constructive contempts by fine of $250 or 6 months imprisonment.

Power of Judicial Officers, Justices of the Peace, and Others

6949—Grants notaries power to compel witnesses to attend and testify like justice of peace.

2483—Grants military courts power to punish disturbances by imprisonment for 5 days.

8701—Grants probate courts same power as district courts.

5957—Grants fire marshal power to punish witnesses and compel compliance, by fine of $100.

3957-2, 6240-13, Supp6240-18½—Grants commissioner of agriculture, dairy and food powers similar to district courts to conduct investigations.

3363—Grants insurance commissioner power to punish refusal to testify by fine of $100.

Miscellaneous

3218—Grants power to punish violations of nuisance injunction by fine of $100 to $1000, and 1 to 6 months imprisonment.
10202—Grants power to punish violations of injunctions against bawdy houses, by fine of $1000, and 3 to 6 months imprisonment.
10123-3—Grants power to punish violations of injunction restraining the publication of obscene matter by similar punishment.
10611—Grants power to punish offenses of grand and petit jurors by fine of $500 and 90 days imprisonment.
9812—Grants power to punish witnesses for failure to attend, by fine of $250 and 6 months imprisonment.
10042—Authorizes punishment of contempts as misdemeanors.
10616—Authorizes punishment of challenged grand juror for continuing to act as grand juror.
10631—Authorizes punishment for inspecting grand jury records before defendant's arrest.
10633—Authorizes punishment for disclosure of indictment before defendant's arrest.
9451—Authorizes punishment of debtor concealing property for failure to give bond.
4542—Authorizes punishment for failure to appear at hospital for inebriates.
8641—Authorizes punishment for unlawful removal of child committed to institution.

MISSISSIPPI

Mississippi Code Annotated, 1930

Statutory Punishment

741—Grants supreme, circuit, chancery and county courts power to fine by $100 and imprison 30 days.

Power of Judicial Officers, Justices of the Peace, and Others

206—Grants board of supervisors power to fine witnesses $50 and imprison, but not beyond continuance of the term.

637—Grants justice of peace power to punish constable for neglect of duty, by fine of $50.

Miscellaneous

3063—Provides for the punishment of failure to obey quo warranto, by fine of $5000.

2063—Provides for the punishment of intoxicated juror by fine of $100 and 1 day imprisonment.

2045—Provides for the punishment of court officers for neglect of duty as to juries, by $50 fine.

1666—Provides for the punishment of fiduciaries for failure to return inventory and appraisal, by fine of $50.

583—Provides for the punishment of court officer conversing with jurors after retirement, by fine of $50 and 7 days imprisonment.

485—Provides for the punishment of clerk for failure to make final record, by fine of $20.

488—Provides for the punishment of clerk for failure to charge jury tax, and of sheriff for failure to collect or pay over same, by fine of $100.

462—Provides for the punishment of a failure to report sale of land under court order, by $100 fine.

2053—Authorizes punishment of sheriff for failure to look out for well being and safe keeping of prisoners.

2056—Authorizes punishment of grand juror disclosing proceedings and evidence.

754—Authorizes punishment of clerk for failure to turn records over to successor.

MISSOURI

Missouri Statutes Annotated

Acts Punishable

Page 2571, Section 1864—Every court of record shall have power to punish as for criminal contempt persons guilty of: (1) Disorderly, contemptuous or insolent behavior committed during its session, in its immediate view and presence, and directly tending to interrupt its proceeding or to impair the respect due to its authority; (2) any breach of the peace, noise or other disturbance directly tending to interrupt its proceedings; (3) willful disobedience of any process or order lawfully issued or made by it; (4) resistance willfully offered by any person to the lawful order or process of the court; (5) the contumacious and unlawful refusal of any person to be sworn as a witness, or, when so sworn, to refuse to answer any legal and proper interrogatory. (This statute formerly contained a no other provision which was declared unconstitutional in State ex inf. Crowe v. Shephard, 76 S.W. 79.)

Statutory Punishment

2572-1865—Authorizes punishment by fine and imprisonment. (This statute formerly prescribed maximum penalties but was declared unconstitutional in C., B. & Q. Rwy. Co. v. Gildersleeve, 118 S.W. 86, afterwards overruled in Ex parte Creasy, 184 S.W. 914.)

Power of Judicial Officers, Justices of the Peace, and Others

2367-2156—Grants justice of peace power to punish (1) contemptuous behavior toward the justice in court; (2) disturbance so near as to interrupt the proceedings; and (3) resistance in presence of justice to process.

2368-2157 and 2158—Grant justice of peace power to punish by fine of $20 and 2 days imprisonment, provided no imprisonment for nonpayment of fine. Defendant must have hearing.

3699-10202—Grants judges of election power to fine $20.

5492-6492—Grants city councils power to keep order.

5810-7126—Grants chairman, board of trustees, power similar to circuit court.

554-14020—Grants arbitrators power similar to justice of peace.

5572-6685, 5605-6675, 5734-6992—Grants power and municipal judge power like circuit court.

5435-6404—Grants president and vice-president of public service commission power similar to circuit court.

2649-2060—Grants probate courts power similar to that of circuit court.

1254-983—Grants referees power similar to justice of peace.

2064-4651—Grants tax board power to punish witnesses.

857-14139, 873-14160, 877-14165, 883-14177—Grant power to orphan's court to enforce orders and to punish contributing to delinquency of a child, by fine of $500 and 6 months imprisonment.

4346-5684—Grants superintendent of insurance department power to fine and imprison witnesses.

4026-1759—Grants special commissioners power to attach defaulting witnesses.

4033-1773—Grants examiners and deposition officers power to attach defaulting witnesses.

Miscellaneous

4728-8826—Provides for punishment of court officers for failure to summons juries, by $100 fine.

4693-8749—Provides for punishment of jurors for nonattendance, by fine of $50.

3140-3527—Authorizes punishment for refusal to testify before grand jury.

348-568—Authorizes probate court to punish failure to produce will.

2064-4651—Authorizes punishment of subscribing witness for failure to appear.

MONTANA

Revised Codes of Montana, 1921

Acts Punishable

908—The following acts or omissions, in respect to a court of justice, or proceedings therein, are contempts of the authority of the court: (1) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding. (2) A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceedings. (3) Misbehavior in office, or other wilful neglect or violation of duty by attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service. (4) Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding. (5) Disobedience of any lawful judgment, order, or process of the court. (6) Assuming to be an officer, attorney, or counsel of a court, and acting as such without authority. (7) Rescuing any person or property, in the custody of an officer, by virtue of an order or process of such court. (8) Unlawfully detaining a witness, or party to an action, while going to, or remaining at, or returning from the court where the action is on the calendar for trial. (9) Any other unlawful interference with the process or proceedings of a court. (10) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness. (11)

When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other persons in respect to it, without immediately disclosing the same to the court. (12) Disobedience, by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer. (Declaratory of common law. (State ex rel. Metcalf v. District Court, 155 P. 278.)

Statutory Punishment

9917—Grants power to punish by fine of $500 and 5 days imprisonment.

Power of Judicial Officers, Justices of the Peace, and Others

9698—Power of justice of peace to punish (1) contemptuous behavior toward the justice while holding court; (2) disturbances in presence or so near as to interrupt the proceedings; (3) disobedience or resistance to process; (4) disobedience of subpoena or refusing to be sworn or testify; (5) rescue of persons or property in custody by virtue of an order.

9701—Grants justice of peace power to punish by fine of $100 and 1 day imprisonment.

8873—Grants judicial officers power to keep order and compel obedience and attendance.

6926—Grants officers authorized to take proof of instruments power to punish.

4469—Grants board of county commissioners power like district courts.

Miscellaneous

9909—Authorizes punishment of ejected person making re-entry on property.

11656—Authorizes punishment of resistors of process and aiders and abettors.

10944—Authorizes punishment of contempts as misdemeanors.

11815—Authorizes punishment of challenged grand juror continuing to act.

8878—Authorizes punishment of repeated orders after disallowance.

9436—Authorizes collection of costs of resale of property by person not paying for same at prior sale.

9843—Authorizes punishment for practice of law without license.

10538—Authorizes punishment of person refusing to act as interpreter.

NEBRASKA

Compiled Statutes of Nebraska 1929, and 1931 Supplement

Acts Punishable

20-2121—Every court of record shall have power to punish by fine and imprisonment, or by either, as for criminal contempt, persons guilty of any of the following acts: (1) Disorderly, contemptuous, or insolent behavior toward the court, or any of its officers in its presence; (2) any breach of the peace, noise, or other disturbance tending to interrupt its proceedings; (3) wilful disobedience of or resistance wilfully offered to any lawful process or order of said court; (4) any wilful attempt to obstruct the proceedings, or hinder the due administration of justice in any suit, proceedings, or process pending before the courts; (5) the contumacious and unlawful refusal of any person to be sworn or affirmed as a witness, and when sworn or affirmed, the refusal to answer any legal and proper interrogatory. (Publications within sec. 4. Bee Publishing Co. v. State, 185 N.W. 339.)

Power of Judicial Officers, Justices of the Peace, and Others

64-107—Grants notaries power to commit witnesses.

19-619, 648—Grants city council and city managers power over witnesses in investigation.

22-1604—Grants municipal courts power to punish (1) contemptuous behavior toward the judge while holding court; (2) disturbance so near as to interfere with proceedings; (3) resistance of process in presence; and (4) failure of witness to appear and testify.

22-1605—Grants municipal courts power to punish by fine of $50 and 10 days imprisonment.

22-806—Grants municipal courts power to punish witnesses by fine of $50.

21-1812—Grants justices of the peace power to punish as in sections 1, 2, 3, of 22-1604.

21-1813—Grants justices of the peace power to punish by fine of $20 and 10 days imprisonment.

21-806, 906—Grants justices of the peace power to punish defaulting jurors and witnesses by $5 fine.

Miscellaneous

53-128, 129—Provides for punishment of violation of liquor nuisance injunction, or breaking into or using closed property, by fine of $200 to $1000, and 3 to 6 months imprisonment.

28-443—Provides for similar punishment of violation of narcotic nuisance injunction.

28-913—Provides for similar punishment of violation of injunction against bawdy houses.

20-1072—Provides for punishment of violation of injunction by fine of $200.

20-1612—Provides for punishment of sheriff packing jury, by fine of $500.

20-1622—Provides for punishment of person seeking job as juror, by fine of $20; attorney or party seeking to place juror, $100 fine.

20-21,135—Provides for punishment of failure to comply with quo warranto order, by fine of $5,000.

20-1611—Provides for punishment by district court of juror for failure to appear, by fine of $10 to $50; after second notice, 10 days imprisonment; failure of county board to send jury list to clerk, $5 to $50; failure of court officer to perform duties as to drawing jurors, $5 to $50 fine, and 30 days imprisonment.

20-1231—Provides punishment for failure to obey district court's subpoena, by fine of $50; other contempts by witnesses, $5 to $50 fine.

NEVADA

Nevada Compiled Laws of 1929

Acts Punishable

8941—The following acts or omissions shall be deemed contempts: (1) Disorderly, contemptuous, or insolent behavior toward the judge while he is holding court, or engaged in his judicial duties at chambers, or toward referees or arbitrators, while sitting on a reference or arbitration, or other judicial proceeding. (2) A breach of the peace, boisterous conduct or violent disturbance in the presence of the court, or in its immediate vicinity, tending to interrupt the due course of the trial, or other judicial proceeding. (3) Disobedience or resistance to any lawful writ, order, rule, or process issued by the court or judge at chambers. (4) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

(5) Rescuing any person or property in the custody of an officer by virtue of an order or process of such court or judge at chambers. (6) Disobedience of an order or direction of the court made pending the trial of an action, in speaking to or in the presence of a juror concerning an action in which the juror has been impaneled to determine, or in any manner approaching or interfering with such juror with the intent to influence his verdict. (7) Every person who shall have been, or shall be hereafter, dispossessed or rejected from out of any piece, parcel, lot, or tract of land, the judgment decree or process of any court of competent jurisdiction and who not having any legal right so to do, shall re-enter into, or upon, or take possession of any such land, or any part thereof, or induce or procure any person not having a legal right so to do, or who shall aid or abet therein, shall be deemed guilty of contempt of the court by which said judgment or decree was rendered or from which such process issued.

Statutory Punishment

8950—Grants power to punish by fine of $500 and 25 days imprisonment.

Jury Trial

8943—Grants right of trial by jury in all indirect contempts. (Held unconstitutional in Pacific Livestock Co. v. Ellison Ranching Co., 213 P. 700.)

Power of Judicial Officers, Justices of the Peace, and Others

1170—Grants municipal courts same power as justice of the peace.

9342—Grants justice of the peace power to punish (1) contemptuous behavior toward the justice while holding court; (2) disturbance in presence or so near as to interrupt the proceedings; (3) disobedience or resistance to process; (4) disobedience of subpoena or refusing to be sworn or testify; (5) rescue of persons or property in custody by virtue of an order.

9345—Grants justice of peace power to punish by fine of $100 and 1 day imprisonment.

Miscellaneous

9226—Provides fine of $500 for failure to obey quo warranto.

9254—Provides fine of $1000 for failure to obey mandamus, upon further refusal 3 months imprisonment.

8424—Authorizes punishment for application for order denied by judge of same rank.

599—Authorizes punishment for practicing law without license.

10052—Authorizes punishment of contempts as misdemeanors.

NEW HAMPSHIRE

Public Laws of New Hampshire 1926

Statutory Punishment

336-7—Grants power to punish witnesses for failure to testify, by $50 fine.

Power of Judicial Officers, Justices of the Peace, and Others

336-7—Grants justice of peace power to fine recalcitrant witnesses $10.
See section 320-10 below.

Miscellaneous

360-10—Grants power to punish violations of injunctions against bawdy houses and liquor nuisances, and the removal or mutilation of court's order closing property.

320-10—Provides that persons making statements out of court as to the merits of pending case to any judge, justice of peace, magistrate or county commissioner, may be punished by fine of $50.

NEW JERSEY

Compiled Statutes of New Jersey 1910, and 1924 Supplement

Acts Punishable

Supp50-140—No power of any court in this state to punish contempt shall be construed to extend to any case except the misbehavior of any person in its actual presence, the misbehavior of any officer of said court in its official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness or other person, to any lawful writ, process, order, rule, decree, or command of the said court. (Held not to apply to court of chancery. In re Bowers, 104 A. 196 (N.J.Eq.)

Power of Judicial Officers, Justices of the Peace, and Others

1160-2030, 1197-2138, 1230-2230, 1433-2846—Provide that recorder's courts in cities of different classes shall have power of court of record, as to contempts.

1334-2560, 1364-2649, 3991-79—Provide that police courts in cities shall have power of court of record to punish contempts.

3358-66—Grants to courts martial power to fine $250 for disobeying subpoena.

5114-371—Grants board of equalization of taxes power to enforce compliance with its judgment.

232-10—Grants to mayor's courts power of a court of record as to contempts.

448-102—Grants vice-chancellors same power as chancellor.

Miscellaneous

2224-14—Provides that the arrest of a witness shall constitute a contempt.

3372-136—Provides for trial by jury in court of common pleas where contempt consists of failure to comply with order to deliver militia uniforms.

442-82—Provides for $50 fine to enforce obedience to chancery orders.

428-51—Provides that failure of officer to return chancery process may be punished by fine of $50.

3924-43—Grants chancery court power to force disclosal of members of association with partnership liabilities.

1859-131—Provides that sheriff or jailer allowing unauthorized persons to view an execution shall constitute a contempt.

143-22—Provides that contempts before auditors shall be punished by courts.

2012-204—Grants district courts power to punish disobedience of subpoena by witnesses or parties, by fine of $50.

190-21—Provides that refusal of mother of bastard child to tell father shall be contempt.

2110-98—Provides that failure of election officer to transmit election result shall constitute contempt.

4024-30a—Grants court of quarter sessions power to enforce order for payment of poor relative's keep.

NEW MEXICO

New Mexico Statutes Annotated 1929

Power of Judicial Officers, Justices of the Peace, and Others

79-211—In the following cases and no others, a justice of the peace may punish for contempt: (1) Disorderly, contemptuous and insolent behavior toward such justice, while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceeding which shall tend to interrupt such proceeding or impair the respect due to its authority. (2) Any breach of the peace, noise or other disturbance tending to interrupt the official proceedings of such justice. (3) Resistance or disobedience of any lawful order or process made or issued by him.

79-212—Grants justices of the peace power to punish by fine of $10 and 3 days imprisonment, but provides that justice of peace can not jail for nonpayment of fine.

79-213—Provides that there must be a hearing before justice of peace.

Miscellaneous

72-111—Provides that violations of liquor nuisance injunctions shall be punished by fine of $500 to $1000 and 30 days to 1 year imprisonment.

115-110—Provides that failure to comply with quo warranto judgment may be punished by fine of $100 to $1000 and 30 to 90 days imprisonment.

40-131—Provides that drainage commission be under court direction and liable to punishment for contempt.

34-105—Provides that power of courts conform to usage in courts of United States.

34-330—Abolishes common law rule that contemnor's denial cannot be traversed.

105-910—Provides for the punishment by the courts of contempts before referees.

134-1111—Provides for the punishment by the courts of contempts before commissions to take testimony.

NEW YORK

Cahill's Consolidated Laws of New York, 1930

Acts Punishable

31-750—A court of record has power to punish for a criminal contempt, a person guilty of either of the following acts, and no others: (1) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority. (2) Breach of the peace, noise, or other disturbance, directly tending to interrupt its proceedings. (3) Willful disobedience to its lawful mandate. (4) Resistance willfully offered to its lawful mandate. (5) Contumacious and unlawful refusal to be sworn as a witness; or, after being sworn, to answer any legal and property interrogatory. (6) Publication of a false, or grossly inaccurate report of its proceedings. But a court can not punish as a contempt, the publication of a true, full and fair report of a trial, argument, decision, or other proceeding therein. (Upheld in People v. Oyer Court, 4 N.E. 259.)

41-753—Grants power to punish the following acts if they tended to defeat, impair or prejudice the rights or remedies of a private party: (1) Neglect of duty or misbehavior by officer of court in official transactions; (2) failure to pay money in compliance with an order of court where execution cannot be awarded; (3) assuming to be an officer of the court without authority, rescuing property or persons in custody of law, detaining a witness or party going to, remaining at or returning from court; (4) failure of witnesses to attend or to testify; (5) persons summoned as jurors conversing with party to a suit or other person as to merits of a case or receiving a communication without immediately notifying the court; (6) inferior magistrates or tribunals for disobeying orders of a superior court or proceeding further in a case which has been removed from their jurisdiction; and (7) all other cases where contempts have been used heretofore to enforce civil remedies.

Statutory Punishment

41-751—Authorizes punishment up to $250 and 30 days in 31-750, and provides for imprisonment for 30 days for nonpayment of fine.

41-773—Provides that if it appears that no injury was caused by any contempt mentioned in 41-753, court cannot punish by fine of over $250.

41-774—Provides that person may be imprisoned 3 months for failure to pay fine of $500 or less, and 6 months if fine above $500.

Power of Judicial Officers, Justices of the Peace, and Others

66-119—Grants workmen's compensation commission power to enforce compliance with subpoenas.

Miscellaneous

46-343p—Provides that violations of injunctions against bawdy houses shall be punished by fine of $300 to $1000 and 3 to 6 months imprisonment, and that on second offense imprisonment may be one year.

46-343—Authorizes same punishment for mutilating or removing closing order from property closed by such injunction.

41-600—Provides for the punishment of contempts as misdemeanors.

12-15—Provides for the enforcement of orders to debtors or assignees by county court.

NORTH CAROLINA

North Carolina Code of 1931

Acts Punishable

978—Any person guilty of any of the following acts may be punished for contempt: (1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority. (2) Behavior of the like character committed in the presence of any referee or referees, while actually engaged in any trial or hearing persuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceeding authorized by law. (3) Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of any court. (4) Willful disobedience of any process or order lawfully issued by any court. (5) Resistance willfully offered by any person to the lawful order or process of any court. (6) The contumacious and unlawful refusal of any person to be sworn as a witness, or, when so sworn the like refusal to answer any legal and proper interrogatory. (7) The publication of grossly inaccurate reports of the proceedings of or in any court, about any trial, or other matter pending before said court, made with intent to misrepresent or to bring into contempt the said court; but no person can be punished as for a contempt in publishing a true, full and fair report of any trial, argument, decision or proceeding had in court. (8) Misbehavior of any officer of the court in any official transactions. The several acts, neglects and omissions of duty, malfeasances, misfeasances and nonfeasances, above specified and described, shall be the only acts, neglects and omissions of duty, malfeasances, misfeasances and nonfeasances which shall be the subject of contempt of court. And if there are any parts of the common law now in force in this state which recognized other acts, neglects, omissions of duty, malfeasances, misfeasances and nonfeasances besides those specified and described above, the same are hereby repealed and annulled. (No limitations. Ex parte McCown, 51 S.E. 95.)

985—Grants power to punish the following acts if they tended to defeat, impair or prejudice the rights or remedies of a private party: (1) Neglect of duty or misbehavioir by officer of court in official transactions; (2) failure to pay money in compliance with an order of court where execution cannot be awarded; (3) assuming to be an officer of the court without authority,

rescuing property or persons in custody of law, detaining a witness or party going to, remaining at or returning from court; (4) failure of witnesses to attend or testify; (5) persons summoned as jurors conversing with a party to a suit or other person as to the merits of a case or receiving a communication without immediately notifying the court; (6) inferior magistrates or tribunals for disobeying orders of a superior court or proceeding further in a case which has been removed from their jurisdiction; and (7) all other cases where contempts have been used heretofore to enforce civil remedies.

Power of Judicial Officers, Justices of the Peace, and Others

983—Grants power to punish contempts committed in their presence, to justice of peace, referees, commissioners, clerks of several courts, boards of commissioners of each county, and the corporation commissioners.

106—Grants clerk power to punish a failure to account.

938—Grants clerk of superior court power to preserve order and punish contempts.

1090—Grants corporation commissioner power similar to court of record.

5424—Grants county boards of education power to punish disturbances.

1816—Grants power to persons acting under a commission of a court of record to punish witnesses for refusing to testify.

1480—Grants justice of peace power to punish persons cursing before him, by $5 fine.

1535-Nos. 48, 49—Authorize justice of peace to punish by fine of $5 and 2 days imprisonment.

Miscellaneous

714—Provides for punishment of debtor failing to give bond not to dispose of assets.

3183—Provides for punishment of violation of injunctions against bawdy houses and gambling and liquor nuisances, by fine of $200 to $1000 and 3 to 6 months imprisonment.

3184—Provides for similar punishment for breaking into or using property closed under such injunction.

979—Denies appeal from convictions for direct contempt.

NORTH DAKOTA

Compiled Laws of North Dakota 1913, and 1925 Supplement

Acts Punishable

8178—Every court of record shall have power to punish as for a criminal contempt persons guilty of any of the following acts and no other: (1) Disorderly, contemptuous or insolent behavior committed during its sitting in its immediate view and presence and directly tending to interrupt its proceedings, or to impair the respect due to its authority. (2) Any breach of the peace, noise or other disturbance directly tending to interrupt its proceedings. (3) Willful disobedience of any process or order lawfully issued or made by it. (4) Resistance willfully offered by any person to the lawful order or process of the court. (5) The contumacious and unlawful refusal to be sworn as a witness; or after being sworn, to answer any legal and proper interrogatory. (6) The publication of a false or grossly inaccurate report of its proceedings, but no court can punish as a contempt the publication of a true, full and fair report of any trial, argument, decision or other proceeding therein.

8180—Grants power to punish the following acts if they tended to defeat, impair or prejudice the rights or remedies of a private party: (1) Neglect of duty or misbehavior by officer of court in official transactions; (2) failure to pay money in compliance with an order of court where execution cannot be awarded; (3) assuming to be an officer of the court without authority, rescuing property or persons in custody of law, detaining a witness or party going to, remaining at or returning from court; (4) failure of witnesses to attend or to testify; (5) persons summoned as jurors conversing with party to a suit or other person as to merits of a case or receiving a communication without immediately notifying the court; (6) inferior magistrates or tribunals for disobeying orders of a superior court or proceeding further in a case which has been removed from their jurisdiction; and (7) all other cases where contempts have been used heretofore to enforce civil remedies. (Obstructive publications punishable. State v. Nelson and Baker, 150 N.W. 267.)

Statutory Punishment

8179—Authorizes punishment for contempts under 8178 by fine of $250 and 30 days imprisonment, and 30 days imprisonment for nonpayment of fine.

8190—Authorizes punishment for contempts under 8180 by fine not exceeding $250 unless actual injury, and imprisonment for 6 months to enforce compliance with orders of court.

Power of Judicial Officers, Justices of the Peace, and Others

3792—Grants power as to witnesses to city board of commissioners like county courts.

7650—Grants power to referees to compel testimony and keep order, like courts.

9126—Grants justices of peace power to punish (1) contemptuous behavior toward the justice while holding court; (2) disturbances in presence or so near as to interrupt the proceedings; (3) disobedience or resistance to process; (4) disobedience of subpoena or refusing to be sworn or testify; (5) rescue of persons or property in custody by virtue of an order.

9128—Grants power to justices of the peace to punish by fine of $100 and 1 day imprisonment.

Supp5191b13—Grants power to court commissioners, similar to that of district courts.

3409—Grants power to coroners over witnesses and jurors, similar to that of justice of peace.

3660—Grants power to police magistrates, similar to that of justice of peace.

Miscellaneous

9645—Provides for the punishment of violations of injunctions against bawdy houses by fine of $25 to $1000 and 1 year imprisonment.

9692—Provides for similar punishment of violations of gambling nuisance injunctions.

Supp10183a8—Authorizes the punishment of violations of injunctions against cigarette or cigarette paper nuisance.

Supp10177—Authorizes similar punishment of violations of injunctions against drug nuisances.

9419—Authorizes similar punishment of contempts as misdemeanors.

10645—Authorizes similar punishment for challenged juror continuing to act.

Supp10500a24—Authorizes similar punishment of default by father of bastard child.

832—Provides for the punishment of jurors for failure to appear, by fine of $5 to $50; on second notice 10 days imprisonment; failure to return jury list, $50; failure of officers to perform duties as to juries, $5 to $50 fine and 30 days imprisonment if gross.

1427—Authorizes punishment for interfering with juvenile officer of the court.

OHIO

Page's Annotated Ohio General Code and 1931 Supplement

Acts Punishable

12137—A person guilty of any of the following acts may be punished as for a contempt: (1) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment or command of a court or an officer; (2) misbehavior of an officer of the court in the performance of his official duties, or in his official transactions; (3) a failure to obey a subpoena duly served, or a refusal to be sworn, or to answer as a witness, when lawfully required; (4) the rescue, or attempted rescue, of a person or of property in the custody of an officer by virtue of an order or process of court held by him; (5) a failure upon the part of a person, recognized to appear as a witness in a court, to appear in compliance with the terms of his recognizance. (Not intended to and cannot limit power. Hale v. State, 45 N.E. 199.)

Statutory Punishment

12142—Grants power to punish by fine of $500 and 10 days imprisonment.

Power of Judicial Officers, Justices of the Peace, and Others

1598—Grants power to probate court to enforce orders similar to that of court of common pleas.

4557—Grants mayor's court power of justice of peace.

126—Grants notaries power over witnesses similar to justice of peace.

10319—Grants justice of peace power to fine witnesses $5.

2706—Grants sundry claims board power of court officials taking depositions.

2709—Grants inspectors of county treasurers power of court official taking depositions.

11512—Grants court or officer power to fine witness $5 to $50 and commit.

8572-100—Grants recorder power to force production of title papers.

4576—Grants police courts power to punish.

1735—Grants justice of peace power to punish: (1) contemptuous behavior toward the justice while holidng court; (2) disturbance so near as to interrupt proceedings; (3) resistance in presence of justice to execution of process.

1736—Grants hearing before justice of peace, and fine of $20 and 10 days imprisonment.

Miscellaneous

6212-4, 6212-8—Provides fine of $1000 and 6 months for violating bawdy house injunction and mutilation or removal of closing order.

1441—Provides fine of $1000 for failure to obey court order.

12322—Provides fine of $10,000 for failure to obey quo warranto and turn over books, etc.

11888—Provides fine of $200 for disobedience of injunction.

Supp10501-27—Provides fine of $100 for failure of officer to serve or return probate process.

Supp10504-10—Authorizes punishment to enforce production of will.

12157—Authorizes punishment to enforce arbitrator's award.

5175-21—Authorizes punishment for failure to file true, complete account of election expenses.

OKLAHOMA

Oklahoma Statutes of 1931

Constitutional Provisions

13437—The legislature shall pass laws defining contempts and regulating the proceedings and punishment in matters of contempt; Provided, that any person accused of violating or disobeying, when not in the presence or hearing of the court, or judge sitting as such, any order of injunction, or restraint, made or entered by any court or judge of the state shall, before penalty or punishment is imposed, be entitled to a trial by jury as to the guilt or innocence of the accused. In no case shall a penalty or punishment be imposed for contempt, until an opportunity to be heard is given.

13604—The corporation commission shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company.

Acts Punishable

1956—Contempts of court shall be divided into direct and indirect contempts. Direct contempts shall consist of disorderly or insolent behavior committed during the session of the court and in its immediate view, and presence, and of the unlawful and willful refusal of any person to be sworn as a witness, and the refusal to answer any legal or proper question; and any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings, shall be deemed direct contempt of court, and may be summarily punished. Indirect contempts of court shall consist of willful disobedience of any process or order lawfully issued or made by court; resistance willfully offered by any person to the execution of a lawful order or process of a court.

Jury Trial

1958—Provides for trial by jury in all indirect contempt cases, upon demand of accused. See Constitution, section 13437 above.

Power of Judicial Officers, Justices of the Peace, and Others

8774—Grants power to Oklahoma State Market Commission to enforce orders and punish witnesses.

7652—Grants power to boards of county commissioners, by fine of $5 and 1 day in jail.

6450—Grants power to police judge similar to district courts.

856—Grants power to civil service court (justice of the peace) to punish contemptuous behavior toward the justice tending to interrupt proceedings; willful resistance in presence of justice to execution of process.

3360—Grants power to criminal justice court to issue subpoena and punish contempts.

Miscellaneous

280—Provides fine of $50 for witnesses disobeying subpoenas or refusing to testify.

716—Provides fine of $200 for violation of injunction.

2841—Authorizes punishment of challenged grand juror being present or entering into deliberations of grand jury.

OREGON

Oregon Code Annotated 1930

Acts Punishable

8-501—The following acts or omissions, in respect to a court of justice, or proceedings therein, are deemed to be contempts of the authority of the court: (1) Disorderly, contemptuous or insolent behavior toward the judge, while holding the court, tending to impair its authority or to interrupt the due course of a trial or other judicial proceeding. (2) A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding. (3) Misbehavior

in office, or other willful neglect or violation of duty, by an attorney, clerk, sheriff, or other person appointed or selected to perform a judicial or ministerial service. (4) Deceit, or abuse of the process or proceedings of the court, by a party to an action, suit or special proceeding. (5) Disobedience of any lawful judgment, decree, order or process of the court, including judgments, orders and decrees for the payment of suit money, alimony and attorney's fees pendente lite, or by final decree, in suits for dissolution of marriages. (6) Assuming to be an attorney or other officer of the court and acting as such without authority in a particular instance. (7) Rescuing any person or property in the custody of an officer by virtue of an order or process of such court. (8) Unlawfully detaining a witness or party to an action, suit or proceeding, while going to, remaining at, or returning from the court where the same is for trial. (9) Any other unlawful interference with the process or proceedings of a court. (10) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness. (11) When summoned as a juror in a court, improperly conversing with a party to an action, suit or proceeding to be tried at such court, or with any other person, in relation to the merits of such action, suit or proceeding, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court. (12) Disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, decree, order or process of a superior court, or proceeding in an action, suit or proceeding contrary to law, after such action, suit or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate or officer. (Statute covers obstructive publications. State v. Kaiser, 23 P. 964.)

28-1501—Grants power to enforce order before a person or body empowered to conduct a judicial investigation under its authority.

Statutory Punishment

8-502—Grants power to punish by fine of $300 and 6 months imprisonment in (1) and (2) of 8-501, others by fine not over $100 unless rights of third parties are prejudiced.

Power of Judicial Officers, Justices of the Peace, and Others

52-214—Grants power to military court to punish contempts in presence, by 10 days imprisonment.

49-205—Grants state board of conciliation power similar to circuit courts.

16-804—Grants justices of peace power as in superior courts; limits fine to $25 and 10 days imprisonment.

33-621—Grants juvenile courts power to enforce orders.

Miscellaneous

15-132—Provides fine of $100 to $500, and 30 days to 1 year imprisonment for violation of liquor nuisance injunction.

13-2704—Provides fine of $200 to $1000, and 3 to 6 months imprisonment, for violating injunction against bawdy houses.

20-312—Authorizes punishment for violating injunction restraining unlawful veterinary practice.

13-604—Authorizes punishment of grand jurors or court officers for divulging information.

13-1309—Authorizes punishment for applying for bail after refusal by another magistrate.

7-304—Authorizes punishment for applying for order after refusal by another judge.

11-204—Authorizes punishment for refusal to produce will.

PENNSYLVANIA

Purdon's Pennsylvania Statutes Annotated

Acts Punishable

17-2041—The power of the several courts of this commonwealth to issue attachments and to inflict summary punishments for contempts of court shall be restricted to the following cases, to-wit: (1) To the official misconduct of the officers of such courts respectively. (2) To disobedience or neglect by officers, parties, jurors or witnesses of or to the lawful process of the court. (3) To the misbehavior of any person in the presence of the court, thereby obstructing the administration of justice. (Unquestioned.)

Statutory Punishment

17-2042—Grants courts power to imprison where the contempt took place in the presence of the court, and provides that only fines may be levied in other cases.

17-2043—Provides that upon nonpayment of fine person may be imprisoned for 3 months.

Power of Judicial Officers, Justices of the Peace, and Others

42-518—Grants commissioners power of court of records as to witnesses refusing to testify.

5-5—Failure to comply with award of arbitrators.

20-2398—Grants contempt power to orphan's court.

Miscellaneous

17-2044—Provides that publications out of court shall not be punished as contempt. (Unquestioned.)

68-465—Provides that use of closed building in violation of injunction against bawdy house shall constitute contempt.

31-193—Provides that violation of restraining act under food law shall constitute contempt.

12-254—Provides for freedom of witnesses from arrest, and punishment of officers or attorneys for violation, by fine of ten pounds sterling.

66-773—Provides it shall be a contempt punishable by fine of $100 per day for an officer or employee of a public service corporation to absent or conceal himself or documents wanted at hearing before public service commission.

62-1960—Grants court of quarter sessions power to enforce orders for payment of poor relative's keep.

12-1331—Provides that the failure of an officer of a corporation to certify as to debtor's interest therein shall constitute a contempt.

RHODE ISLAND

General Laws of Rhode Island, 1923

Power of Judicial Officers, Justices of the Peace, and Others

40—Grants board of canvassers power similar to that of the courts.

Miscellaneous

269—Authorizes punishment for interferring with persons appointed by court to canvass vote or declare result of the election.

267—Provides for the enforcement of writ of mandamus to compel election officials to perform their duties.

SOUTH CAROLINA

Code of Laws of South Carolina, 1932

Constitutional Provision

1-19—The power to punish for contempt shall not in any case extend to imprisonment in the state penitentiary.

Statutory Punishment

339—Grants power to punish contempts by word or gesture by fine of $50 and provides for fine at discretion of court where person strikes or uses violence in presence of court.

283—Grants power to civil and criminal court of Charleston to punish by fine of $50 and 2 days imprisonment.

Power of Judicial Officers, Justices of the Peace, and Others

2954—Grants power to military courts to punish disturbance of proceedings by 3 days imprisonment.
3713—Grants power to magistrates to punish contempts in presence by fine of $20 and 12 hours imprisonment.
1095—Grants power to coroners to punish disturbance by 1 day imprisonment and refusal to serve on jury, by fine of $20 and 1 day imprisonment.
239—Grants power to probate courts similar to that of circuit courts.
953—Grants power to municipal courts to punish nonattendance of juror, by $10 fine.

Miscellaneous

339—Provides for hearing in direct contempts of court.
699—Grants courts power to punish failure of witness to attend commission to take testimony.

SOUTH DAKOTA

Compiled Laws of South Dakota, 1929

Power of Judicial Officers, Justices of the Peace, and Others

5873—Grants board of county commissioners power to keep order and punish witnesses by fine of $5 and 1 day imprisonment.
2214—Grants justices of the peace power to punish (1) contemptuous behavior toward the justice while holding court; (2) disturbance so near as to interrupt the proceedings; (3) disobedience or resistance to process; (4) disobedience of a subpoena, or refusing to be sworn or to testify; and (5) rescue of persons or property in custody of an officer by virtue of an order.
2217—Grants justices of peace power to punish by fine of $100 and 1 day imprisonment.

Miscellaneous

2081-82—Provides for the punishment of violations of injunctions against bawdy houses and breaking into or using closed property, by fine of $200 to $1000, and 3 to 6 months imprisonment.
3018—Provides for the enforcement of peremptory writs of mandamus by fine of $1000.
3793—Provides that contempts may be proceeded against as misdemeanors.

TENNESSEE

Code of Tennessee, 1932

Acts Punishable

10119—The power of the several courts to issue attachments, and inflict punishments for contempts of court, shall not be construed to extend to any except the following cases: (1) The willful misbehavior of any person in the presence of the court or so near thereto as to obstruct the administration of justice. (2) The willful misbehavior of any of the officers of said courts, in their official transactions. (3) The willful disobedience or resistance of any officer of the said courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of said courts. (4) Abuse of, or unlawful interference with, the process or proceedings of the court. (5) Willfully conversing with jurors in relation to the merits of the cause in the trial of which they are engaged, or otherwise tampering with them. (6) Any other act or omission declared a contempt by law. (Publications within sec. 4. Tate v. State, ex rel. Raine, 177 S.W. 69.)
10110—Section 2 grants power to enforce order before a person or body acting under its authority.

Statutory Punishment

10120—Grants circuit, chancery and appellate courts power to punish by fine of $50, and 10 days imprisonment; all other courts limited to fine of $10.

Power of Judicial Officers, Justices of the Peace, and Others

10138—Section 9 grants justice of the peace power to punish disturbances in presence.

Miscellaneous

10441—Authorizes use of power to enforce answer to suit.

TEXAS

Complete Texas Statutes 1928, and 1931 Supplement

Statutory Punishment

1736—Grants supreme court power to punish by fine of $1000 and 20 days imprisonment.
1826—Grants courts of civil appeals similar power to punish.
1911—Grants district courts power to punish by fine of $100, and 3 days imprisonment.
1955—Grants county courts same power to punish.

Power of Judicial Officers, Justices of the Peace, and Others

1798—Grants commission of appeals power to enforce orders.
2351(13)—Grants county commissioners power to punish by fine of $25, and 1 day imprisonment.
2386—Grants justice of the peace power to punish by fine of $25, and 1 day imprisonment.
3264(11)—Grants commissioners to assess damages in eminent domain, power similar to county court.
7104—Grants state tax board power similar to district court.
5190—Grants industrial commission power to punish witnesses.
6451—Grants railroad commission power over witnesses similar to district court.
6618—Grants officers authorized to take proof of writing, power similar to district court.
CCP878—Grants recorders power similar to county court.
CCP977—Grants justice of peace power to fine outsiders asking questions at inquest over dead bodies, $20.
6686—Grants justice of peace power to fine $10 for failure to join posse.
CCP892—Grants justice of peace power to fine jurors $10 for nonappearance.

Miscellaneous

5110—Provides fine of $100 to $500 and 30 days to 6 months imprisonment for violating liquor nuisance injunction.
7439—Provides fine of $100 for refusal to testify in examination as to antitrust violations.
5204—Provides similar fine of $100 for refusal to testify in examination as to violation of labor law.
CCP374—Provides fine of $100 and 5 days imprisonment for grand juror or bailiff divulging proceedings.
CCP40—Provides fine of $10 to $200 for refusal of sheriff to execute process.
CCP386, 387—Provides fine of $100 for failure to testify before grand jury, or evasion of subpoena.
CCP672—Provides fine of $100 for juror and person he converses with without permission.
6873—Provides fine of $100 for sheriff making false return or failing to execute process.
214—Authorizes punishment of apprentice by county court for failure to go back to work.

SuppPC802a—Authorizes punishment for driving auto after suspension for 2 years for drunken driving.

SuppPC604—Authorizes punishment to enforce payment of allowance to family by deserters.

CCP369—Authorizes punishment of bailiff for taking part in deliberations or being present during vote of grand jury.

CCP647—Authorizes punishment of witnesses conversing about case or reading report or comment thereon.

UTAH

Revised Statutes of Utah, 1933

Acts Punishable

104-45-1—The following acts or omissions in respect to a court of justice or proceedings therein are contempts of the authority of the court: (1) Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding. (2) Breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding. (3) Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service. (4) Deceit or abuse of the process or proceedings of the court, by a party to an action or special proceeding. (5) Disobedience of any lawful judgment, order or process of the court. (6) Assuming to be an officer, attorney or counselor of a court, and acting as such without authority. (7) Rescuing any person or property in the custody of an officer by virtue of an order or process of such court. (8) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial. (9) Any other unlawful interference with the process or proceedings of a court. (10) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness. (11) When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person concerning the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court. (12) Disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

Statutory Punishment

104-45-10—Grants power to punish by fine of $200, and 30 days imprisonment.

Jury Trial

49-2-8—Provides for a jury trial for violation of labor injunction, unless committed in the presence of the court.

Power of Judicial Officers, Justices of the Peace, and Others

20-7-18—Grants power to judicial officers to keep order, punish disobedience of orders, and by witnesses.

104-78-1—Grants power to justice of peace to punish (1) contemptuous behavior toward the justice while holding court; (2) disturbances in presence or so near as to interrupt the proceedings; (3) disobedience or resistance to process; (4) disobedience of subpoena or refusing to be sworn or testify; (5) rescue of persons or property in custody by virtue of an order.

104-78-2—Grants power to justice of peace to punish by fine of $100 and 1 day imprisonment.

Miscellaneous

104-45-2—Authorizes punishment of persons ejected for re-entry on property or abetting others.

20-7-20—Authorizes punishments for application for order once denied.

64-1-4—Provides fine of $200 to $1000, and 3 to 6 months for violation of injunction against bawdy houses.

46-0-38—Provides fine of $5 to $50, and 30 days imprisonment for refusal of drunk to testify where he got liquor.

48-0-15—Provides fine of $5 to $100 for refusal to serve as jury commissioner or neglecting duties.

VERMONT

General Laws of Vermont, 1917

Power of Judicial Officers, Justices of the Peace, and Others

2081—Grants to auditors, referees and commissioners same power as court appointing them.

7326—Grants juvenile courts power to enforce orders as to delinquent child.

Miscellaneous

3606—Authorizes enforcement of payments by father of bastard child.

2705—Authorizes direction of assignee for the benefit of creditors by chancellor.

VIRGINIA

Virginia Code of 1930 Annotated

Constitutional Provisions

63—The General Assembly may regulate the execise by courts of the right to punish for contempt.

156—The state corporation commission shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commissions while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company.

Acts Punishable

4521—The courts and judges may issue attachments for contempt, and punish them summarily, only in the cases following: (1) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice: (2) violence, or threats of violence, to a judge or officer of the court, or to a juror, witness or party going to, attending, or returning from the court, for or in respect of any act or proceeding had or to be had in such court; (3) obscene, contemptuous, or insulting language addressed to or published of a judge for or in respect of any act, or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding; (4) misbehavior of an officer of the court in his official character; (5) disobedience or resistance of an officer of

the court, juror, witness, or other person to any lawful process, judgment, decree, or order of the said court.

Jury Trial

4524—No court shall, without a jury, for any such contempt as is mentioned in the first class embraced in 4521, impose a fine exceeding $50, or imprison more than 10 days, but in any such case the court may impanel a jury (without an indictment, information, or any formal pleading) to ascertain the fine or imprisonment proper to be inflicted, and may give judgment according to the verdict.

Power of Judicial Officers, Justices of the Peace, and Others

See Constitution, section 156 above, for power of state corporation commission.

4522—Grants justices of the peace power to punish same acts as courts of record, but limits punishment to fine of $20 and 10 days imprisonment.

3117—Grants power to civil and police justices to punish by fine of $50 and 10 days imprisonment.

1950a—Grants same power to juvenile and domestic relations courts.

Miscellaneous

1524, 1525—Provides for the punishment of violations of injunctions against bawdy houses, and breaking into or using closed property, by fine of $100 to $1000, and 3 to 6 months imprisonment.

WASHINGTON

Remington's Revised Statutes of Washington

Acts Punishable

1049—The following acts or omissions in respect to a court of justice, or proceedings therein, are deemed to be contempts of court: (1) Disorderly, contemptuous or insolent behavior toward the judge while holding court, tending to impair its authority; (2) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding; (3) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service; (4) deceit or abuse of the process or proceedings of the court by a party to an action, suit or special proceeding; (5) disobedience of any lawful judgment, decree, order or process of the court; (6) assuming to be an attorney or other officer, and acting as such without authority in a particular instance; (7) rescuing any person or property in the lawful custody of an officer held by such officer under an order or process of such court; (8) unlawfully detaining a witness or party to an action or suit while going to, remaining at, or returning from, the court where the action is on the calendar for trial; (9) any other unlawful interference with the process or proceedings of a court; (10) disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness; (11) when summoned as a juror, improperly conversing with a party to an action, suit or proceeding to be tried at such court, or with any other person in relation to the merits of such action, suit or proceeding or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court: (12) disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, decree, order or process of a superior court, or proceeding in an action, suit or special proceeding contrary to law, after such action, suit or special proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer. (Publications within statute. State v. Tugwell and Baker, 52 P. 1056.)

53—Grants power to enforce order before person or body empowered to conduct investigation by it.

Statutory Punishment

1050—Grants power to punish by fine of $300 and 6 months imprisonment, and provides that except in sections 1 and 2, rights of private parties must have been prejudiced if fine over $100.

Power of Judicial Officers, Justices of the Peace, and Others

1891, 1893—Grants power to justices of peace to punish (1) contemptuous behavior toward the justice while holding court; (2) disturbance so near as to interrupt proceedings; (3) resistance or disobedience of process. Defendant must have hearing.

1892—Grants power to justice of peace to punish by fine of $25 and 2 days imprisonment.

4071—Grants county commissioners power of justice of peace.

374—Grants referees same powers as court appointing them.

428—Grants arbitrators power similar to justice of peace.

85—Grants court commissioner power like referee.

58—Grants judicial officers power to keep order and compel attendance and obedience.

Miscellaneous

946-4—Authorizes fine of $200 to $1000, and 3 to 6 months imprisonment for violating bawdy house injunction.

1026—Authorizes fine of $1000 for disobedience by lower court of peremptory mandate.

4169—Authorizes fine of $200 for failure of sheriff to execute process.

1220—Authorizes fine of $50 for failure of witness to appear.

2372—Authorizes punishment of contempts as misdemeanors.

2046—Authorizes punishment of grand juror or officer for divulging facts as to indictment.

1979-2—Authorizes enforcement of payment of money award in bastardy case.

WEST VIRGINIA

West Virginia Code of 1932

Acts Punishable and Jury Trial

6024—The courts and the judges thereof may issue attachment for contempt and punish them summarily only in the following cases: (1) Misbehavior in the presence of the court or so near thereto as to obstruct or interrupt the administration of justice; (2) violence or threats of violence to a judge or officer of the court, or to a juror, witness, or party going to, attending or returning from the court, for or in respect of any act or proceeding had or to be had, in such court; (3) misbehavior of an officer of the court, in his official character; (4) disobedience to or resistance of any officer of the court, juror, witness, or other person, to any lawful process, judgment, decree or order of the said court. No court shall, without a jury, for any such contempt as is mentioned in subdivision (1) of this section, impose a fine exceeding $50, or imprison more than 10 days. (Upheld as to inferior courts in State v. McClaugherty, 10 S.E. 407.)

Power of Judicial Officers, Justices of the Peace, and Others

5075—Grants justices of the peace power to punish (1) contemptuous behavior toward the justice while holding court; (2) disturbance in presence of or so near thereto as to interrupt the proceedings; (3) violence or threats of violence to justice, officer, juror, witness or party going to, attending or returning from court; (4) misbehavior of any officer in his official transactions; and (5) resistance in his presence to process.

5076—Provides for hearing in all contempts before justice of peace and fine of $10 and 5 days imprisonment.

2573—Grants public service commission power similar to circuit court to enforce compliance with orders.

360—Grants county courts power to punish by fine of $50.

Miscellaneous

6038—Provides for punishment of officers failing to levy taxes to pay lynching damages.

6086, 6096—Provides punishment for violation of injunctions against bawdy house, removing or interferring with property, removal or mutilation of closing order, by fine of $100 to $1000 and 6 months imprisonment.

4182—Provides for fine of $50 to $500 for failure of fiduciaries to file inventories.

5543—Authorizes punishment for refusal to assist officer in execution of process.

5284—Authorizes punishment of sheriff for failure to pay compensation to juror.

WISCONSIN

Wisconsin Statutes, 1931

Acts Punishable

256.03—Every court of record shall have power to punish, as for a criminal contempt, persons guilty of either of the following acts and no other: (1) Disorderly, contemptuous or insolent behavior committed during its sittings, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due its authority; (2) any breach of the peace, noise or disturbance directly tending to interrupt its proceedings: (3) willful disobedience of any process or order lawfully issued or made by it; (4) resistance, willfully offered, by any person to the lawful order or process of the court; (5) the contumacious and unlawful refusal of any person to be sworn as a witness; and when so sworn, the like refusal to answer any legal and proper interrogatory; (6) the publication of a false or grossly inaccurate report or copy of its proceedings, but no court can punish as a contempt the publication of true, full and fair reports of any trial, arguments, proceedings or decisions had in such court; (7) the practicing as an attorney in such court without being first licensed as such in the manner provided by law. (Limitations doubtful. State ex rel. Rodd v. Verage, 187 N.W. 840.)

295.01—Provides for the punishment of the following as contempts when rights of private parties prejudiced: (1) misbehavior of officers; (2) parties, fictitious bail, deceit or abuse of proceedings; (3) nonpayment where executions cannot be awarded; (4) assuming to be attorneys or officers, rescue of persons or property in custody, detaining witness or party going to, remaining or returning from court; (5) witnesses, garnishees refusing to obey or answer; (6) jurors conversing as to merits, and not disclosing to court; (7) inferior officers for disobeying order or proceeding after removal; (8) other cases where contempt proceedings are generally used to enforce civil remedies.

Statutory Punishment

256.06—Provides for punishment of acts in 256.03 by fine of $250 and 30 days imprisonment, and 30 days for nonpayment of fine.

195.16—Provides for punishment of acts in 295.01 by imprisonment up to 6 months.

Jury Trial

268.27—Provides that in injunction violations trial by jury if contempt not in presence or disobedience by officer of court.

Power of Judicial Officers, Justices of the Peace, and Others

300.08—Grants justice of peace power to punish for: (1) contemptuous behavior during trial; (2) disturbance so near as to interrupt proceedings; (3) resistance or disobedience to process.

300.10—Grants justice of peace power to punish by fine of $20 and 2 days imprisonment.

133.06—Grants court commissioners power to compel witnesses to testify in attorney general's probe of monopoly.

252.15—Grants court commissioners power to enforce orders.

Miscellaneous

280.12—Provides fine of $200 to $1000 and 3 to 6 months imprisonment for violating bawdy house injunction or breaking or entering closed property.

268.28—Provides fine of $25 and 10 days imprisonment for injunction violation; 15 days for nonpayment of fine.

325.11—Provides fine of $20 for failure of witness to appear in courts of record.

166.14—Authorizes enforcement of money award in bastardy proceedings.

295.03—Authorizes punishment for refusal to pay costs.

WYOMING

Wyoming Revised Statutes, 1931

Statutory Punishment

89-1717—Grants power to punish disobedience of subpoena by witnesses, refusal to be sworn, testify or subscribe to deposition, by fine of $5 to $50.

Power of Judicial Officers, Justices of the Peace, and Others

62-2201—In the following cases and no others, a justice of the peace may punish for contempt: (1) persons guilty of disorderly, contemptuous and insolent behavior toward such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tends to interrupt such proceedings, or impair the respect due to his authority; (2) persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice; (3) persons guilty of resistance or disobedience to any lawful order or process made or issued by him.

62-2202—Grants power to justice of peace to punish by fine of $20, and 2 days imprisonment.

89-123—Grants referee power to punish disobedience of order similar to justice of peace.

Miscellaneous

89-3512—Provides for the punishment of injunction violations by fine of $200.

89-2937—Authorizes punishment of highest bidder at court sale for failure to pay.

61-114—Authorizes punishment for failure to testify before grand jury.

20-425—Authorizes punishment for failure to pay award in bastardy case.

INDEX

Act of March 2, 1931
  antecedents of, 53-56.
  compromise constructions of, 62, 63.
  construction of, 53-74.
  construction of section 2, 56 et seq.
  copied in other states, 27.
  criterion of obstructiveness, 63 to 74.
  criterion of physical proximity, 59 et seq.
  influence of Savin case, 64, 65.
  intent of framers, 55 to 58.
  joker provision of, 56.
  limitations deplored by Justice Baldwin, 60.
  limitations recognized in Robinson case, 60.
  nullification of, 53.
  result of Peck acquittal, 27.
  views of Buchanan, 57, 58.
  views of Krankfurter and Landis, 55, 59, 62.
  views of Justice Baldwin, 60.
  views of Nelles and King, 55, 59, 62.
Alien and Sedition Laws, 23.
Anderson, Thomas, 8.
Attorneys General
  opinions as to executive pardon, 77.
Attorneys, misconduct of, 2.

Baldwin, Justice, 60.
Beck, James, 78.
Bentley, John, 23.
Bishop, 81.
Blackstone, 5, 8, 9, 10, 47.
Bouvier, 81.
Brandeis, Louis, 30, 31, 71, 72, 73.
Brooklyn Rapid Transit Co., 72.
Buchanan, James, 26, 54, 57, 58.
Butler, Paul, 82.

Civil Contempts, no pardon for, 88.
  acts constituting, 3.
  procedure in, 4.
Clayton Act, 43, 44.
Clinton, DeWitt, 24.
Cohen, 32, 74.
Coll Case, 61, 74.
Constitution, contempt provisions, 47, 48.
  constitutional guarantees, 9, 10.
Constitutionality, of pardon, 75-96.
  of statute assumed, 48, 49.
  of statutory reform, 47-52.
Construction, Clayton Act, 44.
  of constitutional provisions, 48.
Contempt of Court, definition of, 1.
  acts constituting, 1.
  antiquity of, 5.
  conventional ideas as to, 4, 5.
  classification of, 2, 3, 4.
  criminal nature of, 9.
  disturbance near court, 1.
  enforcement of orders, 1.
    costs, failure to pay, 1.
    injunctions, violation of, 1.
    judgment, failure to pay, 1.
    mandamus, failure to obey, 1.
    subpoena, disobedience of, 1.
  history of, 8, 9.
  inherent in courts of record, 5.
  misbehavior in court, 1.
  necessity for, 7, 8.
  obstructions of justice, 1, 2.
  officers, misconduct of, 1, 2.
  pardons for, 75-96.
  publications, 2, 19-36.
  role of executive, 75.
  role of legislature, 75.
  source of, 4, 5.
  summary nature, 7.
  trial by jury, absence of, 10.
  uselessness of definition, 1.
  witnesses, defaults by, 1.
Contempts of the King, 8, 9.
Costs, failure to pay, 1.
Courts, classification of, 48.
Craig, 77, 30, 31, 72, 73.
Crime, punishment of as contempt, 13-18.
  bribery, 15, 16.
  influencing juror, 15, 16.
  influencing witness, 16.
  intimidation, 15, 16.
  perjury, 14.
  subornation of perjury, 14.

Criminal Contempts
  acts constituting, 3.
  pardons for, 75-96.
  procedure, 4.
Criminal law, enforcement by injunction, 37-40.
Crittenden, Attorney General, 77.
Curlee, Francis, 78.
Curtis and Curtis, 10.

Daugherty, Attorney General, 77.
Debs, 38, 41.
Direct Contempts, acts constituting, 3.
  procedure, 4.
Disturbance, in court, 1.
  near court, 1.
Draper, 53, 57.

Equity, influence of, 8.
  origin of powers, 9.
Erskine, Lord, 7.
Executive Clemency, see Pardon
Executive Power, as to pardons, 75-96.
  alleged similarity of British and American, 55, 83.

Frankfurter and Greene, 44.
Frankfurter and Landis, 55, 59, 62.
Federalist Party, 23.
Field, Judge, 4.
Fox, Sir John, 5, 8.
Freedom of Speech and Press
  abuse of liberty of press, 36.
  constitutional guarantees as to, 21.
  fight for, 21 et seq.
  nonobservance of, 9.

Gilbert, 8.
Gilpin, Attorney General, 77.
Gompers, 3.
Grand Jury, perjury before, 14.
  attempts to influence, 15.
  intimdation of witness, 16.
  protection of witness, 16.
  publication defaming, 20.
Green, Isaiah, 23.
Grossman, proceedings against, 77, 78.
Grubb, Judge, 68.

Hall, Judge Dominick, 24.
Hammond, Judge, 64.
Hardwicke, Chancellor, 5, 19.
Harlan, Mr. Justice, 65.
Hawley, Judge, 65, 66.
Hay, Charles, 78.
Hecht, U. S. Marshal, 31, 72.
Hill Bill, 38.
Holmes, Oliver Wendell, 30, 31, 71, 72, 73.

Impeachment, attempt to impeach McKean, 22.
  of James H. Peck, 26, 27.
  of Shippen, Yeates and Smith, 23.
Indirect Contempt, acts constituting, 3.
  procedure, 4.
Influencing jurors, punishment of, 15, 16.
Ingersoll, article by, 25, 63.
Injunctions, violation of, 1.
  fight to restrict use, 41-45.
  in labor disputes, 40.
  to enforce criminal laws, 37-40, 91.
  to enforce prohibition, 9, 91.
  to fight prostitution, 40.
  the injunctive power, 37.
Interrogatories, use of, 10.

Jackson, Andrew, 24, 25.
Johnston, Thomas, 92.
Jones, Judge, 66, 67.
Judgment, failure to pay, 1.
Jurors, attempts to influence, 15.
  assaults upon, 17.
Jury shadowing, 73.
Jury Trial, absence of, 10.
  punishment of crime without, 39, 40.
  statutes providing, 51.

Kent, Chancellor, 61.
Killits, Judge, 27, 28, 68, 69, 70.
King, Willard, 13.
Knox, Attorney General, 77.

Labor, use of injunction against, 40.
La Guardia, Fiorello, 45.
Langdell, 19.
Lansing, Chancellor, 24.
Lardner, Rice, 80, 82, 85, 86, 88, 89, 94.
Larremore, Wilbur, 82, 85.
Laski, Harold, 11.
Lawless, Luke, 25, 26.
Legislation, types of, 50.
  demand for by labor, 40.
  demand for limiting contempt power, 47.
  influence of Peck acquittal, 49.
  nullification of by construction, 53-74.
  passage of Clayton Act, 42, 43.
  passage of Norris Act, 44, 45.
  prohibiting punishment of publications, 51, 52.
  providing acts punishable, 50.
  providing jury trial, 50.
  setting maximum penalties, 51.
  summary acts passed by 1860, 49.
Legislature
  power to limit constitutional courts, 48.
  power to limit legislative courts, 48.
Linn, Senator, 25.
Livingston, Edward, 7.

Mackenzie, 92.
McCracken, Duane, 11, 40.
McKean, Thomas, 21, 22.
McLean, Mr. Justice, 85.
McKinley, President, 92.
Madison, James, 87.
Magee, Carl, 35, 80.
Mandamus, failure to obey, 1.
Manton, Judge, 31, 72.
Marshall, Chief Justice, 84.
Martin, Luther, 23.
Mason, Attorney General, 77.
Mayer, Judge, 30, 31, 72, 73.
Miller, Attorney General, 77.
Misbehavior, in presence of court, 1.
  by officers, 1.
Mitchell, Attorney General, 45.
Morrill Case, effect of, 49.

Nelles and King, 55, 59, 62.
Nichols, Judge, 23.
Norris Act, 23.
  constitutionality questioned, 45.
  passage of, 44.

Obstructions of Justice, punishable, 1, 2.
  parties punishable as, 11-18.
  publications, 20.
Officers, misconduct of, 1, 2.
  case of Bentley and Green, 23.
Order to Show Cause, necessity of, 7.
Orders, enforcement of, 1.
Oswald, Eleazor, proceedings against, 21.

Pardons, power same as British king, 83-85.
  abuse of power, 92, 93.
  authorities denouncing, 81, 82.
  authorities upholding, 76-81.
  different approaches, 83-96.
  granted to Magee, 35.
  granted to Shumaker, 35.
  interference with order, 88.
  necessity of, 91, 96.
  realism, 89-95.
  role of executive, 75.
Parties, intimidation of, 16.
Passmore, 22.
Peck, Judge James
  impeachment of, 26, 27.
  punishment of Lawless, 25, 26.
Perjury, punishment of, 13, 14, 15.
  before grand jury, 14.
  false affidavits, 14.
  prevalence of, 11.
  subornation of, 14.
Procedure, civil contempts, 4.
  criminal contempts, 4.
  direct contempts, 4.
  indirect contempts, 4.
  summary character of, 7.
Probihition Laws
  enforcement of by injunction, 9, 38, 39.
Publications, punishment criticized, 19.
  affecting pending cases, 20, 28-30.
  as contempt of king, 8.
  false accounts of proceedings, 20.
  legislation prohibiting punishment, 51, 52.
  muddled condition of law as to, 20, 21.
  obstructive and defamatory, 21, 22.
  obstructive publications, 28-32.
  punishable, 2.
  scandalous publications, 20, 33-36.
  types of, 19.
Punishment, civil contempts, 4.
  criminal contempts, 4.
  excessive, 10.
  of intimidation, 16.
  of perjury, 15.
  influencing jurors or witnesses, 15.
  statutes fixing, 50, 51.

Quinlavan, proceedings against, 28, 29, 30.

Rapalje, 4, 61, 81.
Ryan, Judge, 78, 79, 93.
Red Light Abatement Acts, efficacious use, 40.
Roosevelt, Theodore, 34.

Sanders Case, 31, 32, 74.
Sauvinet Case, attacked by Judge Ryan, 79.
Savin Case, influence in nullifying Act of 1831, 64, 65.
Separation of Powers, limitary legislation, 49.
  pardoning power, 75, 76, 87, 88.
  subordination of doctrine, 79.
Shephard Case, 34.
  misconception of decision, 51.
Shippen, Chief Justice, 22, 23, 48, 49.
Shumaker, proceedings against, 35, 82.
  objectionable character of proceedings, 35, 82.
  pardon held invalid, 35.
Shumaker, W. A., 1, 81, 90.
Sinclair, Harry, 73.
Smith, Associate Justice, 2, 3.
Snell, 3.
Spencer, Ambrose, 24, 26.
Star Chamber, 8.
Stone, Attorney General, 78, 95.
Storrs, 8.
Story, Judge, 85, 87, 88.
Subpoena, disobedience of, 1.
Summary Power and Proceedings
  allowable area as to publications, 36.
  antiquity of, 5.
  constitutional guarantees, 9, 10.
  conventional ideas as to, 4, 5.
  definition of, 7.
  history of, 8, 9.
  misuse of, 11.
  necessity for, 7, 8.
  objection to, 7-11, 13.

Taft, Chief Justice, 31, 73, 75, 76, 78, 81, 83, 84, 88, 89, 90, 91, 92, 94.
Terry, Judge, 4.
Thomas, John L., 8, 9, 23, 33.
Toledo Newspaper Co.
  fine upheld by circuit court, 30.
  fine upheld by supreme court, 30, 70.
  inclusion of personal charges, 30.
  proceedings against, 27-30.
  unsatisfactory opinion of supreme court, 70, 71.
Trial by Newspaper, 36.

Venue, Change of, Norris Act provides for, 44.

Wagner, Mr. Justice, 84.
Webster, Daniel, 26, 54.
Willoughby, W. W., 81, 88.
Wilmot, opinion of, 5.
  cause of law, 47.
Wirt, William, 27, 53.
Witness, refusal to testify, 1.
  bribery of, 16.
  disobedience of subpoena, 1.
  intimidation of, 17.
  preventing attendance of, 16.

Yates, J. V. N., proceedings against, 23, 24.
  proceedings influenced legislation, 49.
Yeates, Associate Judge, impeachment of, 123.

VITA

The author was born at Mount Washington, Baltimore County, Maryland, August 15, 1910. He was educated in the public schools of Baltimore County and Baltimore City. From 1927 to 1930 he studied law at the University of Baltimore. In 1930 he received the degree of LL.B., and was also Corpus Juris prize winner.

In June, 1930, the author passed the Maryland Bar Examination, but was not admitted to the practice of law until August 15, 1931, because of age requirements.

The author entered the Department of Political Science at the Johns Hopkins University in October, 1930, and pursued courses in the Departments of Political Science, History, and Political Economy, from 1930 to 1934. In June, 1933, he received the degree of Master of Arts from Johns Hopkins University.